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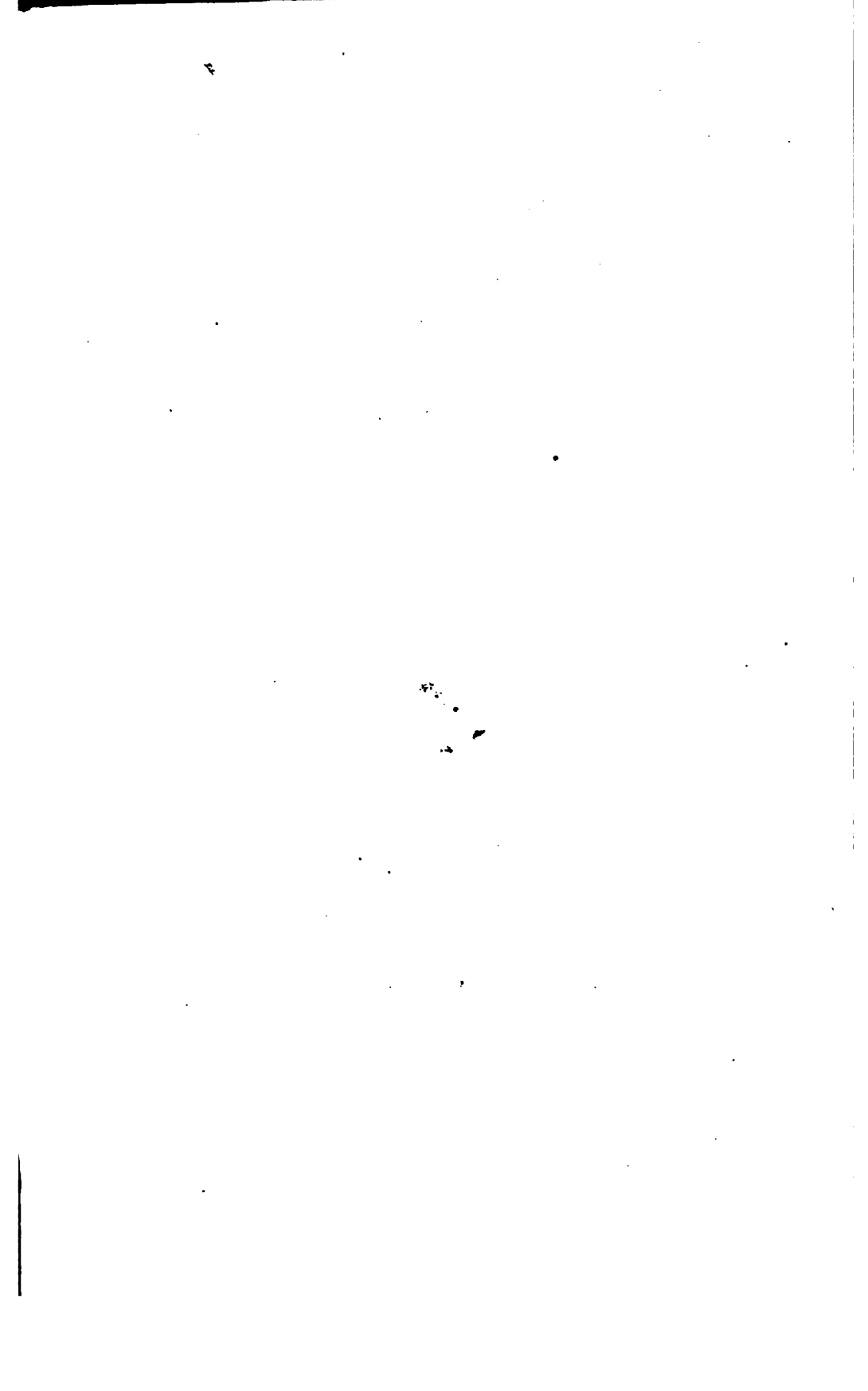












THE  
**LEGAL OBSERVER,**

OR

**JOURNAL OF JURISPRUDENCE.**

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**PUBLISHED WEEKLY.**

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**NOVEMBER, 1834, TO APRIL, 1835,**

**INCLUSIVE.**

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———“ Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.”

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**HORAT.**

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# The Legal Observer.

Vol. IX. SATURDAY, NOVEMBER 1, 1834. No. CCXXXV.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agimus.

HORAT.

## THE PROGRESS OF LAW REFORM.

It now again becomes our duty to state the progress which the cause of Law Reform has made since we last<sup>a</sup> considered the subject—to see at once what has been done, and what is to be done. As diligent watchmen, we must walk round the whole of our legal superstructure, and survey what yet remains, what has been altered, and what points are now threatened, or likely to tumble about our ears: and we can assure our readers it needs all our vigilance to keep pace with all the projected reforms of the day.

The last session of Parliament was, compared with the two preceding ones, not remarkable for the alterations which it has made in the law. The great measure, the Poor Law Act, (4 & 5 W. 4, c. 76,) to which we have always been friendly, concerns rather the country at large than our own profession; and although it is essential for the lawyer to be well acquainted with its provisions, yet its professional interest is merged in its political importance.

The Central Criminal Court Act, (4 & 5 W. 4, c. 36,) which is now in operation, we have also repeatedly praised. The other measures relating to the Criminal Law are not important. The Lancaster Court of Common Pleas Act, (4 & 5 W. 4, c. 62,) although perhaps its principle may be doubted, has much improved that Court, by assimilating its practice to that of the superior Courts of Westminster, and enlarging its jurisdiction; and the other acts relating to the Common Law, (c. 39,) which

relate to costs in actions of *quare impedit*, and c. 47, which is intended to prevent the Courts of Quarter Sessions interfering with the assizes, are useful measures.

The acts relating to Equity and Conveyancing are all on the safe side. They are all practical remedies for admitted defects in the law. They have been already, or will be all, noticed under the proper head.

So far, then, we have nothing to regret in the acts of the last session of Parliament. The state of the Poor Laws has long been an admitted grievance, which had arrived at that pitch that almost any change must have been for the better; and the other measures have been all proceeded with, in the deliberate and cautious spirit which we have so often advocated. But this is only half the thanks which we have to express to the second session of the Reformed Parliament. While we are enumerating what it passed, let us remember what it did not pass. In the House of Commons, the General Registry Bill was thrown out by a larger majority than at any former period; and neither in that house nor in the upper house were any other projects, intended to effect great and sweeping changes, received with much favour. We have thus briefly adverted to what was done in the last session—let us as briefly see what is to be done in the next. And as to this we have two guides. The first is in the list of motions in the notice-book of the House of Commons for the next session of Parliament, which we have already printed at length.<sup>b</sup> By this we find that the Attorney General will introduce a bill to abolish imprisonment for

<sup>a</sup> See 8 L. O. 113.

<sup>b</sup> See 8 L. O. 363.

debt, except in cases of fraud; and also bills for rendering uniform the execution of all wills of real and personal property, and for facilitating the enfranchisement of copyholds, these several measures being in pursuance of the recommendations contained in the Fourth Report of the Common Law Commissioners, and the Third and Fourth Reports of the Real Property Commissioners. Mr. Kennedy proposes a substitute for Local Courts, in a bill which is to give the Courts of Quarter Sessions the power of trying civil cases, to the amount of 20l. Mr. Pryme is anxious to abolish grand juries! and Mr. Divett, to repeal the usury laws. Mr. Ewart follows up his efforts for the amelioration of the criminal code, by proposing bills for the abolishment of capital punishment in cases of letter-stealing and sacrilege, and for giving counsel to prisoners. Mr. Poulter and Sir Andrew Agnew will renew their attempts to legislate for the better observance of the Sabbath.

But we have another and more recent clue to the intentions of the Government as to Law Reform, in an article in the last number of the *Edinburgh Review*, which has attracted attention from the general opinion, (which, it is to be remarked, has not been in any way denied,) that it proceeds directly from the pen of the Lord Chancellor. In this article the following passage occurs, in alluding to the proceedings of the last Session of Parliament:

"Another great measure had been proposed, and would undoubtedly before this time have been adopted, had not an accident intervened. We allude to the new law of debtor and creditor, including the abolition of imprisonment for debt, and the giving full recourse to creditors against all the property of the debtor. That a measure of this difficult and complicated kind could only be conducted through the House of Commons by the Attorney-General, the only law officer of the Crown who was conversant with proceedings in Courts of Common Law, must at once be obvious to every reader. Within a fortnight after the beginning of the session he was thrown out of Parliament, and only regained a seat (to the lasting honour of our Scottish metropolis, and the signal discomfiture of the Tory party), towards the close of the session. This alone caused the postponement of the great measure of Law Reform, of which we are speaking; and we may add, this alone postponed the Local Courts Bill, which, after its

fate in the Lords the year before, was most judiciously announced in the Commons by Lord Althorp early in the session of 1834. For the accident which, throwing the Attorney-General out of Parliament, obstructed the progress of Law Reform for a whole year, surely neither the Government nor the Parliament could be held answerable."

So that by this it appears, that besides the Bill for the Abolition of Imprisonment for Debt, the Local Courts Bill will also be attempted in the next session—with what success we shall see. In the same article, we could only smile at the following reference to the New Bankruptcy Court.

"The success of the plan has given popularity in the city to all such wise and well considered schemes of improvement; *no one ever has complained of any part of the system, except the number of the Judges being unnecessarily large*, a point foretold by the Lord Chancellor himself, but in which he yielded to the strong remonstrance of practitioners—and the Government have since carried into effect an important measure, the establishment of a Criminal Court; and have brought forward a bill for wholly altering the law of debtor and creditor. Who can doubt that this last measure, which will probably become the law of the land next session, and place England above all countries in the world for the wisdom and humanity of her laws, would have been postponed for an indefinite period of time, *had there been any manifest errors committed in the kindred measure of the New Bankruptcy Court Bill.*"

Now, to pronounce the Bankruptcy Court Act to be a perfect measure, and to declare that it has never been complained of, except as to the number of the Judges of the Court of Review, and that it has no manifest errors, is either to betray gross ignorance, or to be guilty of wilful misrepresentation. We see that the *Examiner*, a journal which should be acquainted with the real facts of the case, positively contradicts the statement that the Lord Chancellor *was* desirous of appointing fewer Judges. But be this as it may, the objection made at the time to the Chancellor's scheme, and reiterated afterwards,—the validity of which experience has fully confirmed,—was, that the Court of Review, if not wholly unnecessary, should at any rate have consisted of one competent Judge only. The evils of the former administration of the Bankrupt Law were so great and evident, that it was difficult not to do

some good in attempting to amend it; but surely no disinterested person would say that the Court of Review has "never been complained of," although we have frequently heard it considered as "a manifest error."

Another measure which may possibly be brought in, is a bill relative to the Appellate Jurisdiction of the House of Peers, of which we gave a full account in our last number; but as a similar measure was proposed in the preceding session, and was not proceeded with, or even mentioned until no step could be taken to further it, we presume that its originator is not very anxious about it.

One word in conclusion. We recently adverted to an eulogium passed on the bar by the Lord Chancellor. If this was a mere idle compliment we gave it the notice it deserved; but if it were at all intended as the *amende honorable*, we should meet it in a very different way. We will not join in the present *run* made against the noble and learned Lord in certain quarters. If he be willing to pursue a different course towards the profession of which he is the head, we shall hail it as a most fortunate circumstance. We have never had any personal feeling against him, and as we are sure it is his interest, so we would fain hope it is also his wish, to regain the confidence of his own profession.

## THE LAW OF FIXTURES.

IN conformity with our original design of treating successively of every branch of law which can interest the profession generally, we now propose to treat of the Law of Fixtures. The entire subject of this branch of law is compendiously described in the following question;—Whether such and such things (as the case may be)—chattels in their original construction or nature, retain that character, and continue subject to the law of personal property after being annexed to the soil or realty. As to every case in which this question can arise, there is one general rule, the bearing or effect of which ought always first to be inquired into and considered; namely, that without being actually fixed to the realty nothing can be deemed a fixture, so as to raise the above question. We shall, therefore, first illustrate the practical meaning and application of this rule; secondly, we shall state the general rule respecting fixtures, and the exceptions; and lastly, we shall shew in what manner the right of removing fixtures is

varied, with reference to the character of the claimants, or the different relations of the parties interested.

First, without being *affixed* to the realty, nothing can be deemed a fixture, in the sense of a thing which, in virtue of its annexation, has become by operation of law a part of the realty. Thus, in *Elwes v. Maw*,<sup>a</sup> with reference to the case of *Culling v. Tuffnell*,<sup>b</sup> in which Chief Justice Treby is stated to have holden, "that a tenant who had erected a barn upon the premises, and put it upon pattens and blocks of timber lying upon the ground, but not fixed in or to the ground, might by the custom of the country, take them away at the end of his term,"—Lord Ellenborough observed, "To be sure he might, and that without any custom, *for the terms of the statement exclude them from being considered as fixtures; they were not fixed in or to the ground.* The same rule seems to have governed the decision of *Horn v. Baker*.<sup>c</sup> In that case the question was, as to the right of the assignees of a bankrupt to take certain things as goods and chattels in the order and disposition of the bankrupt at the time of the bankruptcy. The property in question—the effects of a distiller—consisted of certain stills *set in brick-work, and let into the ground; certain vats supported by and resting on brick-work and timber, but which were not fixed in the ground;* and some other vats standing on horses or frames of wood, which were not let into the ground, but stood on the floor. The Court distinguished the *stills* from the rest. "The stills," said Lord Ellenborough, "were fixed to the freehold, and as such, we think, would not pass to the assignees under the description of goods and chattels; but *contrà* as to the vats that rested on frames, and were not themselves let into the freehold;" these the Court considered as goods and chattels.

In two or three settlement cases, we have a further illustration of the sort of annexation which is not sufficient to make a chattel a fixture, or part of the realty. In *The King v. the Inhabitants of London-thorpe*,<sup>d</sup> the plaintiff, a pauper, claimed a settlement by reason of the occupation of a tenement, parcel of which, to make it of the requisite value for the purpose—the value of 10*l.* a year—was a mill built by himself on the residue of the tenement, which was

<sup>a</sup> 3 East, 55.

<sup>b</sup> Buller's Nisi Prius, 34.

<sup>c</sup> 9 East, 215.

<sup>d</sup> 6 T. R. 377.



land, and of which he was tenant. The mill was what is called a post-windmill; a mill resting on cross traces laid upon brick-work, without being affixed to it—the usual mode of building mills of that kind; and Lord *Kenyon*, on the question whether this mill was parcel of the tenement, which was the same thing as whether it became part of the realty or continued a chattel, said, “There is no doubt that the taking of a windmill attached to the ground might confer a settlement. But this windmill is described in the case as nothing but a chattel. It might as well be said, that an iron malt-mill would give a settlement. This post-windmill was the sole property of the tenant himself; it was not fixed in the ground, but detached from it.”

In *The King v. the Inhabitants of Otley*,<sup>c</sup> a settlement was claimed in respect of the occupation of a similar mill; the mill in this case was of the kind called in some counties a bag-mill; it was built of wood; it rested by its own weight on a wall, but was in no other way attached to the realty. Mr. Justice *Bayley* said, “The question is, whether the mill be parcel of a tenement? To be so, it must be part and parcel of the freehold. Now it is not parcel of the freehold unless it be affixed to it, or to something previously connected with it. Here the mill was not affixed to the land, but merely rested on a foundation of brick. The sessions have found that if it had stood upon the ground it would have worked as well. If it had, the only difference would have been, that it would have rotted. This is analogous to the case of a barn set upon pillars, and that is nothing more than a chattel. The windmill in this case would clearly have gone to the executor, and not to the heir.” And *per Parke, J.*—“To constitute a tenement it is necessary that the structure should be affixed to the soil, or to something annexed to the soil. Here the windmill rested merely upon the brick foundation, without being annexed to it by cement.”

From these cases our readers will learn what kind of annexation to the realty is necessary to convert a chattel into a fixture. We shall next illustrate the general rule respecting the ownership of fixtures.

The general rule is, that things which have once become parcel of the realty, cannot be removed by any person in possession, who has merely a temporary or limited ownership, as tenant for years, for

life, or in tail; but that such things are the property of the owner of the ultimate reversion or remainder.<sup>f</sup>

Undoubtedly, when this rule was made, it had reference chiefly to agricultural erections: as commerce advanced, it became an important question, whether it applied also to trade erections; and the multifarious advance of the arts raised the further question, whether it applied to erections for ornament and domestic convenience. Accordingly we find these distinctions constantly referred to in the cases on this subject. As to the first kind of fixtures, the ancient rule prevails. In *Elwes v. Maw*,<sup>g</sup> the question was as to a beast-house, a carpenter's shop, a fuel-house, a cart-house, a pump-house, and a fold-yard; which were stated to be “necessary for the occupation of the farm, which could not be well managed without them;” and the Court held, that by removing them, the tenant who had put them up had rendered himself liable to an action. This case was decided on the broad ground of the erections in question being agricultural erections. It would, however, be too narrow a statement of the rule to say, that it applied only to agricultural erections; but its further application will be better understood when we have stated the exceptions.

The main distinction is between agricultural erections and trade erections; and the latter are the chief exceptions. Thus, as “a colliery is not only an enjoyment of the estate, but in part a carrying on a trade,” Lord *Hardwicke* held in two cases,<sup>h</sup> that the fire-engines used in working it might be removed by the executor of the tenant for life, the latter having erected them. So, upon the same principle, a cider-mill,<sup>i</sup> a soap-

<sup>f</sup> See also *Jones v. Davis*, 2 B. and Ald. 167, where trover was brought for certain jibs; these jibs were placed in caps of timber, which were fixed into the buildings; and it being stated in the case that they could be taken in and out of the caps, without injuring either them or the buildings; that they were usually valued between outgoing and incoming tenants; the Court held, that they were not fixtures, but goods and chattels.

<sup>g</sup> *Ubi supra*.

<sup>h</sup> Lord *Dudley* and Lord *Ward*, Amb. 113. *Lawton v. Lawton*, 3 Atk. 13. Per Lord *Hardwicke*, “One reason that weighs with me is, its being a mixed case, between enjoying the profits of the lands and carrying on a species of trade; and considering it in this light it comes very near the instances in brewhouses, of furnaces and coppers.”

<sup>i</sup> See Lord *Ellenborough's* judgment, *Elwes v. Maw*, *ubi supra*.

boiler's plant,<sup>k</sup> a house constructed of wood, and erected by a varnish manufacturer to make varnish in,<sup>l</sup> have severally been considered as removable; and in *Elwes v. Maw*, Lord *Ellenborough*, recognizing these cases, says, "In process of time the rule in favour of the right of the tenant to remove utensils set up in relation to trade became fully established."

From these remarks our readers will be able, in the great majority of cases, to apply both the rule and the principle upon which depend the chief exceptions; and we shall proceed to consider the law with relation to fixtures not belonging to either of the two kinds above mentioned, but put up for ornament or domestic or personal convenience. And as to these, we believe all the cases may be reconciled by distinguishing them into two species, such as by their structure, nature, mode of erection, and other peculiarities, must reasonably be regarded as improvements of the estate, and such as can, without injury to the estate, be regarded as matter of mere temporary convenience or enjoyment. A conservatory attached to a house, and built on a brick foundation, obviously comes within the first description; and accordingly the Court of Common Pleas, in *Buckland v. Butterfield*,<sup>m</sup> held that a conservatory was not removable. On the other hand, the Court mentioned ornamental chimney pieces, pier glasses, hangings, wainscot fixed only by screws, and the like, as established exceptions. Such things also were recognized by Lord *Ellenborough*,<sup>n</sup> in

<sup>k</sup> *Poole's Case*, 1 Salk. 368.

<sup>l</sup> *Penton v. Roberts*, 2 East, 88. In this case Lord *Kenyon* said, "The old cases upon this subject lean to consider as realty whatever was annexed to the freehold, by the occupier; but in modern times the leaning has always been the other way, in support of the interests of trade. What tenant will lay out his money in costly improvements of the land, if he must leave every thing behind him, which can be said to be annexed to it? Shall it be said that the great gardeners and nurserymen, who expend thousands of pounds in the erection of green-houses and hot-houses, &c., must leave all these things, when they are even permitted to remove trees, or such as are likely to become such? If it were otherwise, the very object of the holding would be defeated. This is a description of property divided from the realty." Note.—In *Buckland v. Butterfield*, 4 Moore, 447, Lord Chief Justice *Dallin*, in delivering judgment, threw doubt upon the above opinion of Lord *Kenyon*, as to the green-houses and hot-houses erected by the great gardeners and nurserymen.

<sup>m</sup> 4 Moore, 446.

<sup>n</sup> Lord *Ellenborough* suggested, that the

*Elwes v. Maw*, as removable. In *Grymes v. Bouveren*<sup>o</sup> the question was as to a pump, which was so affixed that it could be removed without any injury to the well or freehold; and the Court held it removable. Lord Chief Justice *Tindal* said, "It is extremely difficult to draw a general,<sup>p</sup> and at the same time to lay down any precise or accurate rule on this subject. Each case must depend upon its own peculiar circumstances and the nature of the article, as well as the object of setting it up; and the mode or degree of firmness with which it is affixed, must be taken into consideration. The pump, as described to have been fixed in this case, appears to me"—(observe the uncertainty of the expression,)—"to fall within that class of fixtures which are removable, as between landlord and tenant. It has been decided that a tenant for years may remove articles of ornament during the term, although affixed to the freehold, such as ornamental grates, stoves, marble chimney pieces, pier glasses, wainscot fixed by screws, and the like. So coppers, ranges, ovens, and various other articles of that description, have, upon a change of occupiers, been usually allowed by landlords to be valued by the outgoing to the incoming tenant, or sold by the former; and in many cases the landlord himself becomes the purchaser. Looking then at the facts of this case,—considering that the pump was an article of domestic convenience,—that it was slightly fixed to the freehold, and removed without doing it any material injury,—that it was erected by the tenant, and might be taken away entire, I think that, as between landlord and tenant, the latter had a right to remove it." On the whole then, it appears, first, that for a chattel to become a fixture, it must be affixed either to the free-

Courts had excepted these ornaments from the general rule upon the consideration probably of their being merely "ornamental furniture, and not necessary to the enjoyment of the freehold;" from which it may be inferred, that his Lordship thought the exception extended only to such things as were so slightly attached as to be equivocally fixtures or goods and chattels. The present disposition of the Courts seems to be to treat such things as goods and chattels. See *Jones v. Davis*, *suprà*, n. f.

<sup>o</sup> 4 Moore & Payne, 146.

<sup>p</sup> We believe that in distinguishing this third kind of fixtures into the above two species, we have generalized the various cases and decisions on this subject more concisely and accurately than was ever done before, and that an attention to this distinction will be of material use to preserve consistency in future decisions.

hold, or to something else which is attached to the freehold. Secondly, that fixtures put up for the purposes of agriculture are, in general, not removable. Thirdly, that fixtures put up for the purposes of trade or manufacture are removable. Fourthly, that ornamental fixtures are not removable when from their nature, structure, mode of annexation, or other peculiarities, they may most reasonably be regarded as improvements of the estate; but, fifthly, contrariwise, when from their nature, structure, mode of annexation, and other peculiarities, they may most reasonably be regarded as things of temporary convenience and personal taste or enjoyment.

Having occupied so much space with the above remarks, we must be very brief respecting the variations of right which take place with reference to the relations of the parties interested. The question arises sometimes between the heir of the person by whom the fixtures were erected, and his executor; sometimes between tenant for life and in tail, and the remainder-man or reversioner; and sometimes between landlord and tenant. If the question is as to trade fixtures or agricultural fixtures, the right seems subject to no variation, but to be alike as between all these different parties; the variation takes place, therefore, chiefly in the case of ornamental fixtures, and fixtures for domestic convenience or enjoyment, as to which the claim of the tenant for years is always favourably regarded, while in the case of any other party the claim to remove is always unfavourably regarded,—on what principle has never yet been shewn, though, on some future occasion, we shall endeavour to shew that the principle is a presumption that a party whose interest is of great duration, like that of tenant for life, intended things fixed to be permanent, while the presumption in the case of tenant for years as to the same things would be, that he intended to remove them; unless indeed this presumption was discredited by the peculiar mode of annexation.

tual Administration of Justice in England and Wales," directed, that the General Quarter Sessions of the Peace should be held, among other times, in the first week after the 28th of December, and in the first week after the 31st of March.

In some counties the time usually fixed for holding the Spring Assizes interfered with the holding of the April Quarter Sessions; and though the Justices of the Peace have authority to hold General Sessions at other times besides those specified in the 1 W. 4, c. 70, such Sessions are not Quarter Sessions within the meaning of several statutes which give jurisdiction to General Quarter Sessions. Proceedings under such statutes would consequently be illegal if taken at any other than the regular Quarter Sessions. On the other hand, the holding of the Assizes and Sessions at the same time was attended with great inconvenience.

The object of the present act, therefore, is to remove this inconvenience, and to allow the Justices of the Peace a discretion as to the time of holding their April Quarter Sessions.

The act is in substance as follows:

The Justices in their General Quarter Sessions held in the week next after the 28th of December, may name two Justices, who (after the Spring Assizes have been appointed,) shall fix the day for holding the next General Quarter Sessions of the Peace, so as such time shall not be earlier than the 7th of March, nor later than the 22d of April.

The day so fixed is to be notified in such newspaper as the Justices "so assembled" shall direct.

The act then provides, that the General Quarter Sessions held on the day so fixed and notified, shall be valid, and that it shall not be necessary to hold any Sessions in the week next after the 31st of March.

But where no other day shall be so fixed, the Justices shall hold their General Quarter Sessions in the week next after the 31st of March, according to the 1 W. 4, c. 70.

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#### CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834. No. VII.

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##### THE SPRING ASSIZES AND QUARTER SESSIONS ACT.

4 & 5 W. 4, c. 47.

The 1 W. 4, c. 70, "for the more effec-

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#### REVIEW.

*A concise View of the Principles, Object, and Utility of Pleadings; and of the Causes of the Abuses in modern Practice, and the imperative Necessity for Reformation in these respects, and the consequent great Importance of the New Rules; with Observations for the use of Students, and an Appendix, containing those Rules, and*

*the Statute 3 & 4 W. 4, c. 42, Sects. 1, 23, 24, and some other Rules of Hilary Term, A. D. 1834.* By Joseph Chitty, Esq., of the Middle Temple, Barrister at Law. London: H. Butterworth. 1834.

It may be useful at the present time—the eve of another legal year—to notice the principles and objects of Special Pleading. We are induced to call attention to the subject from the information we have received of the frequent instances of indolence on the part of students, owing, as it seems, to the erroneous impression that the recent alterations in the Law and Practice of the Courts, render all the former books and precedents almost entirely useless; and we understand they not only neglect to collect precedents for their future practical use, but give up most of their accustomed readings.

Now this is undoubtedly an error of very serious consequence. We may notice in particular, that the changes effected by the new Rules on Pleading consist principally in the *number* of counts and pleas, and not in their form or nature. The other alterations are of minor importance—such as omitting the repetition of the venue, &c. We trust therefore that the younger class of our readers will return to their books, and pursue that course of learning which experience has proved to be the only method of attaining eminence in the profession. “The reason and principles of law,” as Mr. Chitty observes, “can never change;” and therefore we exhort all who have thought otherwise to betake themselves to their studies.

As a guide in this matter we may certainly look with some confidence to the large experience and practical knowledge of Mr. Chitty, who says—

“It will be found that the adoption of the new rules will render it essential for all practitioners, before declaring or pleading in any action, if not before its commencement, *more carefully* than at present to examine and consider the facts of the case, and the law affecting it, in the first instance, so at least to be able to ascertain with more certainty the *substance* of the transaction on one side as well as the other. It will even be advisable, before the commencement of a suit or defence, carefully to enquire of the principal witnesses what they know of the transaction (a proceeding which is permitted even in Scotland, although, in general, what is termed precognition of a witness in a civil suit is there prohibited); and this would prevent many an untenable action being commenced, or defence idly continued.

“The statement of the facts must then, unless in the instances of the most common debts,

be laid before a counsel or special pleader of experience to frame the *single* count; and it will be found, that, in general, it will be most advantageous for the plaintiff to form a *special* and full declaration in lieu of a general *indebitatus* count, because then the defendant in his plea must admit many of the several allegations, and the plaintiff will thereby be relieved from the risk and expense of proving them. So, as regards pleas, it will be found that the use of the general issue has been abolished; and the defendant will be compelled to confine his denial to a *part* of the declaration, or he must plead specially new facts, such as his infancy, or other ground of defence not in direct denial of the plaintiff's declaration, and which are now frequently by surprise proved under the general issue.”

Mr. Chitty states, that the objects of the new Rules are—as indeed the real purpose of special pleading always was—

“First, to compel each party in an action more explicitly to state his cause of action and ground of defence, so that his opponent may be better informed what is the exact point intended to be established. Secondly, to diminish the number of counts, and the length and expense of pleading, and long records. Thirdly, to prevent the indiscriminate use of the plea of general issue, which unjustly compels a plaintiff to prove *several facts*, and to incur the *risk* of failure on the trial, upon points wholly foreign to the justice of the case, and not unfrequently *surprises* the plaintiff on the trial, by the setting up a ground of defence not before communicated or even hinted. Fourthly, to narrow the issue and limit the number of the points to be tried, and thereby not only to diminish expense, but also the risk of failure in proof of comparatively immaterial allegations; and Fifthly, the great reduction of the present expense of a trial, incident to the subpoenaing and conveying witnesses to and from the place of trial, and maintaining them there.”

On the necessity of special pleading, Mr. Chitty observes that—

“Uninformed and inexperienced individuals are too apt to decry sciences of which they are ignorant, and to abuse all technical terms as useless jargon; and as it is more easy to *criticise* than to *improve*, it flatters the conceit of the ignorant, to be able to evince any, even superficial knowledge of a subject, by joining in a vulgar attack upon terms of art, or even the art itself. And therefore many individuals, as regards pleading, will be found, who insist that prescribed rules are wholly unnecessary, and that if parties were unshackled, they would naturally more intelligibly state their causes of complaint or grounds of defence than in what is indiscriminately termed the present jargon of pleading. But would it be so? Experience has established that in all countries, although a few educated persons might be able to make a lucid statement, yet with the great mass of litigants it would be far otherwise. Even, in ordinary conversation, how few persons are

clear and concise in their narratives, and how many are found to intermix facts with arguments, and to rely on immaterial points, so as to render their statements almost unintelligible. Some will be much too prolix and diffuse, whilst others will proceed as if their hearers were already in full possession of the facts, and will omit the communication of perhaps the most important circumstances. And few indeed will observe any logical order in their statements, even of simple facts. And if in such narratives perspicuity be not evinced, how great would be the confusion if there were no rules affecting the description of complicated legal rights to personal and real property, the varieties of which in the progress of society have become almost innumerable! Hence, even, in the earliest times, it was found essential to establish certain *principles* relating to the *statement* of rights, injuries, and remedies, termed the *pleadings*, and to enforce such principles by various *rules*, the adherence to which has in general been found conducive to justice. This prevails in all parts of Europe, and even in the interior of our immense territory in India, where they have long found it essential to have their regular pleaders, there called *Vakeels*. In this country, the rules prescribed in relation to special pleading, and its utility, have invariably been commended by all well-informed persons, and especially by those whose known principles have been most liberal and avowedly adverse to useless fictions or technicalities; and it will be found, that, in modern times, it is in general more necessary to prevent the *abuse* of the science as at present established, than to change it for any other that could be suggested."

To reconcile the profession to the curtailments which have taken place, Mr. Chitty refers to the conciseness of ancient pleadings.

"It is certainly established by history, and the examination of old records, especially those in Saunders' Reports and in Lutwyche's Reports, that, anciently, Declarations and Pleas were framed much more considerably than has prevailed of late, as well in the *application* of the *brevia formata* (being the forms of writs and pleadings collected in the book called *Registrum Brevium*), as in those which are termed actions *on the case*, being those framed as new cases arose, and adapted by the serjeants or counsel, being the pleaders of that time, to the varying circumstances of each particular case, and the declaration stated, with great particularity, the cause of action, and *only one count* was allowed, or at least in practice adopted, and the plea only traversed a particular part of the declaration; and before the statute 4 Anne, c. 16, only *one* plea could be pleaded. Hence, it followed, that the action either terminated at an early stage, upon demurrer upon a question of law, or in a *single issue* or *question of fact*: or, if the plea stated new matter, then the plaintiff, excepting in a few instances, could only traverse one part of such plea, and

was not allowed to deny or compel the defendant to prove the whole of his allegations; and as all other facts were admitted, excepting that in particular which was put in issue, only one or two, or at least, *very few witnesses* were necessary, and, consequently, the risks of not proving one or more of several facts, and the expense of a trial, were then comparatively small. The use of *several counts*, especially in *indebitatus assumpsit*, and of *several pleas*, still less those of the general issue, were formerly unknown. Thus, although we certainly find, in the time of Charles the Second, a count in *indebitatus assumpsit*, yet there was *only one* adopted; and, shortly afterwards, there is a form of a *single count* in *assumpsit*, stating all the circumstances of a contract to pay for services as a servant, with full averments of the plaintiff's performance, and which, in modern times, would be stated in an *indebitatus* count with several others.

The pamphlet, besides the subjects included in the extracts we have made, treats of Variances—the origin of numerous Counts and Pleas—the practice of requiring Particulars of Demand—allowing Evidence of new Facts under the General Issue—and various other topics.

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## SELECTIONS FROM CORRESPONDENCE. No. LXXXII.

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### ON THE LAW OF DESCENT.

I had occasion a short time since to refer to the chapter in Sir William Blackstone's Commentaries "On Descent," (b. 11. c. 14.) the rules whereof have been so much altered by the Inheritance Act. Although I can hardly presume to flatter myself that I have performed the task correctly, perhaps the following version of the Seven Canons of Inheritance laid down in that chapter, as altered by the enactments of the statute 3 & 4 Wil. 4, c. 106, may not be wholly useless or unacceptable to the student.

1. Inheritances shall lineally descend to the issue of the person who last died actually seised *in infinitum*; and in default of issue, they shall ascend to the lineal ancestor immediately before they shall go to the collateral relations claiming through such lineal ancestor. p. 208. § 5, 6.

2. The male issue shall be admitted before the female. p. 212.—This canon is unchanged.

3. Where there are two or more males of equal degree, the eldest only shall inherit; but the females altogether. p. 213.—This canon is also unchanged.

4. The lineal descendants *in infinitum* of any person deceased shall represent their ancestor. p. 216.—The same.

5. On failure of lineal descendants or issue,

and of the immediate lineal ancestor, the inheritance shall descend to the collateral relations, being of the blood of the first purchaser, and claiming through such lineal ancestor, subject to the three preceding rules. p. 220. § 6.

6. In the admission of the collateral relations to the inheritance, the next collateral kinsmen of the whole blood, (both male and female) and their issue shall first inherit, and then the collateral kinsmen of the half blood, of the same degree, and their issue, subject to the next canon. p. 223. § 9.

7. In collateral inheritances the male stocks shall be preferred to the females, unless where the lands have in fact descended from a female. p. 234. § 7, 8.—This is also unaltered.

O.

#### SPIRITUAL AND ELEEMOSYNARY CORPORATIONS SOLE.

Allow me through the medium of this periodical, to ascertain whether any, and what statute of the present reign, relates to the recovery of tithes, moduses, or compositions, belonging to spiritual or eleemosynary corporations sole; and whether such as belong to temporal corporations sole, not being eleemosynary, are included in the Limitations Act, 3 & 4 Wil. 4, c. 27.

I conceive, that the Modus Act, 2 & 3 Wil. 4, c. 100, does not apply to the recovery of *Tithes*, but only gives validity to claims of modus and composition when set up against the tithe-owner; and that when they have been established under its provisions, their recovery, if withheld or adversely received, as well as the tithes themselves when not disputed, is governed and regulated by the Limitation Act, so far as that act applies.

But as tithes, moduses, and compositions, belonging to spiritual and eleemosynary corporations sole, are expressly exempted from the operation of the Limitation Act by section 1, I think that they must still be governed by the rules of the common law relative to prescriptions, and be therefore traced as heretofore, from at least the reign of Richard I.

I also think that tithes, moduses, and compositions, belonging to every corporation aggregate, and to every temporal corporation sole, not being eleemosynary, are included in the Limitation Act, inasmuch as all temporal corporations sole, are not necessarily eleemosynary.

In the 2 & 3 Wil. 4, c. 71, and 100, more attention has been paid to the classification of corporations, than in the Limitation Act, for in c. 71, we have "ecclesiastical and lay," and in c. 100, "temporal and spiritual," which expressions are very appropriate and apposite; but in the Limitation Act we have "spiritual and eleemosynary," as if "eleemosynary" were equivalent to "temporal," but which I do not think is the case, for eleemosynary corporations are only one species of those termed lay, or temporal.

J. S.

#### PREScription ACT, 2 & 3 WIL. 4, c. 71.

As there appears to me to be an inconsistency between sections 7 and 8 of this statute, respecting rights of way and easement, I shall be glad to have their *consistency* pointed out by some correspondent.

Where land over which any way, &c. is enjoyed, shall be held by a tenant for years, (by whom the right of way, &c. could of course be resisted) the time of such enjoyment is to be excluded in computing the period of 40 years, limited by section 8; but is (I think) to be included in the period of 20 years, limited by section 7, which speaks only of tenants for life, and omits tenants for years.

Hence then arises the inconsistency to which I allude, inasmuch as the short period of 20 years is thus allowed to work a greater injury to the reversioner, than the longer one of 40 years; unless the expression "tenant for life," be held to comprise the estate and interest of a tenant for years; but which construction I do not think the Courts would allow.

J. S.

#### PRACTICE AT THE JUDGES' CHAMBERS.

##### IRREGULARITY OF WRIT.—COSTS.

The decision of Lord Denman respecting costs on setting aside proceedings for irregularity, at chambers, stated by E. S., vol. 8, p. 487, is at variance with a principle laid down by Mr. Baron Alderson, who, on setting aside a *capias* for irregularity, and being asked for costs, refused to order them, and said, "Had you applied to the Court, costs might have been ordered; but if you choose to come to this cheap and summary tribunal you cannot have costs."

R. B. W.

##### TIME FOR PUTTING IN BAIL.

By the 16th section of the Uniformity of Process Act it is enacted, "that *all such proceedings* as are mentioned in *any writ, notice, or warning issued* under the *said act*, shall and may be had and taken in default of a defendant's appearance or putting in special bail, as the case might be." The defendant in the action in which I was concerned, was arrested on the 24th of September, and on the 2d day of October bail was put in. I thought the latter end of the 11th section of the same act, regarding the time between the 10th day of August and the 24th day of October in each year, might have saved me; but Lord Chief Justice Denman held that I was too late, and that the bail at least ought to have been put in by the 1st. All the Judges' clerks to whom I mentioned the circumstances, said the practice was inclusive of both days, as mentioned in the form of the writ given in the schedule to

the act. I am not at liberty to give the names of the parties in the action.

H. P. J.

[In the 2d edition of Dax's Practice, p. 47, it is stated that "the eight days are reckoned inclusive.]"

#### INDORSEMENT ON WRIT.

As every decision of practical import is of some use to the profession at large, I beg to send the following:—I sued out a writ of summons for a country client, in an action brought to recover damages for a breach of contract; but as the plaintiff sought to obtain unliquidated damages, I, of course, did not indorse any amount for debt or costs on the back of the writ. The defendant's agent took out a summons to set aside the process for irregularity, on account of the debt and costs not being indorsed on the writ. We attended before Lord Denman, C. J., who, after taking some days to consider of the question, dismissed the summons; thereby deciding that in such cases as the one I have alluded to, no sum need be indorsed for debt and costs. Indeed it would be absurd to do so, because the plaintiff would indorse the amount of damages intended to be indorsed in the declaration, which would not benefit the defendant in any respect; and it would, moreover, raise a great difficulty in country cases, where the agent is not acquainted with the probable amount of damages sought to be recovered. I brought my action in *assumpsit*; but supposing it had been commenced in debt, perhaps I should have had more difficulty in contending against the wording of the act. This may be a point worth consideration, though I imagine the Judges would decide in the manner above mentioned. S. W.

### SUPERIOR COURTS.

#### Rolls.

##### AGREEMENT.—VENDOR AND PURCHASER.— OFFER AND ACCEPTANCE.

*In the progress of a negotiation for the sale of mines, the vendor, in a letter written to the purchaser, says, "I should not be inclined to sell for less than 300*l.* per share."* Held, that this was an offer, and that an unconditional acceptance of it would bind the vendor.

*The purchaser, in his letter accepting the offer, added new stipulations: Held, that the acceptance was thereby only conditional, and the vendor released from his offer.*

Mr. Bickersteth and Mr. Bethell, for the plaintiff, stated that this suit was instituted for the purpose of obtaining a re-transfer to the plaintiff of three 47th shares in certain iron mines, called the St. Ives Consols, which had been transferred into the name of the defend-

ant, and for an account of the profits of such shares received by the defendant since the time of the transfer. The plaintiff, Mr. Gilbert, being the owner of the shares in question, and having entered into a negotiation for the sale of them to Mr. Halse, those gentlemen met in London early in March 1833, for the purpose of discussing the terms of the proposed sale; but they were unable to agree as to the value of the shares, and the plaintiff returned into the country. On the 10th of March, the plaintiff wrote a letter from Devonport to Mr. Halse, stating that he "should not be inclined to sell his shares in the Consols for less than 300*l.* per share," as he had heard the mine was much improving. Mr. Halse treated this letter as an absolute offer for the sale of the shares at 300*l.*; and accordingly, on the 14th of March he wrote to the plaintiff a letter, in which he stated, that it was not for himself, but for a friend, that he proposed to purchase the shares, and that he accepted the shares at the price required, 300*l.* per share, from the end of December preceding, including, of course, all the ore and minerals; and he added, in a postscript, that he should send a memorandum of transfer of the shares to his friend, Mr. Millett, for the signature of the plaintiff on the following day. He did accordingly send a memorandum of transfer on the 15th of March; and on the same day the plaintiff wrote a letter to the defendant, declaring that he had not intended by his letter to make an absolute offer of the shares, and that he was then in treaty with another person at a higher price. He afterwards returned the memorandum. On the 17th of March, the defendant wrote a letter of strong expostulation to the plaintiff, in which he declared his readiness to pay the purchase money, and expressed his determination to write to the purser of the mine, to insert Mr. Millett's name instead of the plaintiff's in the cost book, as the proprietor of the mine. The plaintiff answered this letter, by stating that he never meant to make an absolute offer, and by intimating to the defendant, that if he wrote as he threatened, to the purser, the purser would not dare to act upon his direction. In that particular the plaintiff miscalculated the courage of the purser; for the defendant did write, and the purser actually transferred the shares from the name of the plaintiff into the name of Mr. Millett. Under these circumstances, the plaintiff filed his bill to recover possession of his property, which could not be held to have passed from him unless there had been an absolute offer of sale on his part, and an unconditional acceptance of the offer on the part of the defendant. But the offer was not absolute, inasmuch as the plaintiff only stated he "should not be inclined to sell under a certain sum," and not that he was ready to sell at that price.

Mr. Pemberton and Mr. Richards, for the defendant.—Upon the treaty for the sale, the defendant had offered 250*l.* a share, and the plaintiff required time to consult with his son. The plaintiff did accordingly return into the

country, and consulted with his son; and having proposed to sell the shares at 300*l.* a share, those terms were accepted by the defendant. The attempt to recede from the contract was founded upon a mere verbal quibble. As to the supposed condition annexed to the acceptance of the terms, that stipulation was in conformity with the usage observed in the transfer of all property in mines.

Mr. *Kindersley* appeared for Mr. Millett, and submitted to the direction of the Court.

The *Master of the Rolls*.—The plaintiff and defendant in this case having met for the purpose of settling the terms upon which the sale of the shares in question should be effected, it appears that one of the reasons why the contract was not then completed was, that the plaintiff desired to know the opinion of his son as to the value of his shares. The plaintiff returns into the country, and having obtained the opinion of his son, he writes to the defendant, that he should not be inclined to take less than 300*l.* a share, the offer made by the defendant having been 250*l.* a share. The letter contains simply that statement, and not one word of additional matter. The facts are so far undisputed. Now as to the words "I should not be inclined to sell for less than 300*l.* a share," I am clearly of opinion that this was an offer, and that an unconditional acceptance of that offer would have bound the plaintiff. The difficulty in this case is, that the acceptance was not unconditional. Halse, in his answer to the plaintiff, says that he will send him a memorandum of agreement. He does send him a memorandum, which I find contains a stipulation that Millett, the purchaser, whose name was not mentioned in the offer, and who was to have all the benefit of the ore and minerals, should for them indemnify the seller against all the costs and charges to which he might be liable during a given time. All these are additional terms in the contract; and I am bound therefore to consider that the defendant's acceptance was not unconditional. Mr. Halse must therefore procure the name of the plaintiff to be restored to the cost book, as the proprietor of the mine; but I shall not give the plaintiff the costs of this suit, being persuaded that he receded from his contract because he thought he had a prospect of obtaining better terms from another person.

*Gibbard v. Halse*, at Westminster, June 9, 1834.

### Equity Exchequer.

#### WILL.—CONSTRUCTION.—CUMULATIVE LEGACY.

*The intention of a testator clearly expressed in a codicil to his will, is not to be defeated by inferences of a different intention drawn from the will and other codicils thereto.*

The parties to this suit were brothers, and the question raised by them for the decision of the Court was upon the construction of the

will and codicils of Mr. John Halford, their father, whether a legacy of 15,000*l.* given by a codicil to the eldest son, was in addition to, or substitution for, the provision made for him in the will.

The question was argued by Mr. *Rolfe* and Mr. *Barton*, for the eldest son's accumulation; and by Mr. *Temple* and Mr. *Kindersley*, *contra*, for the substitution.

The points of the arguments, which were of great length, as well as the terms of the will and codicils, may be collected from the following observations and judgment:—

Lord *Lyndhurst*, Chief Baron, said, the question was whether the legatee under the codicil was to take 15,000*l.*, in addition to the sum to which he was entitled under the will. It had been argued that such was not the intention of the testator; and, certainly, there are circumstances and expressions leading to that conclusion. On the other hand, the testator in the codicil, in express terms said, that it was his intention that the 15,000*l.* should be in addition to the sum to which the legatee would be entitled under the will. It was extremely difficult, therefore, from that argument, and the inference to be drawn from the special circumstances of the will, to say that such argument and such inference are to countervail the directly expressed intention of the testator, that he intended this sum to be added to that to which the legatee would be entitled under the will. The sum however in dispute was a large sum, and as his Lordship had not read the will, it would be desirable that he should do so before he disposed of the case, although according to the present inclination of his mind, it did not appear to him a very easy matter to come to the conclusion, that the testator had an intention directly opposed to that which he had expressed in the codicil.

His Lordship, on coming into Court on a subsequent day, gave judgment in the case. It was unnecessary for him to state the whole of the will. The testator bequeathed by it the residue of his property, to be equally divided between his three sons. There was some real property, with respect to which the testator gave his eldest son the choice of taking it, as part of his share, at a stipulated sum. The testator afterwards made certain codicils in favor of his younger sons, giving 15,000*l.* to each of them, stating that such sum was to be considered as part of their share of the residue. Thus the case stood, when a codicil was made upon which the present question arose. It was in these terms: "Having paid 15,000*l.* to each of my sons, the Rev. Thomas Halford, and Charles Douglas Halford, I think it but right and just, that a legacy of the same amount should be given to my eldest son and partner John Halford the younger; I, therefore, by this codicil, give and bequeath to my eldest son the sum of 15,000*l.* to be received by him, free of legacy duty, out of my effects, in addition to the sum to which he will be entitled under my will made by me, dated 17th of December, 1823." The language of this codicil was clear and explicit, to the effect that the



15,000*l.* should be given in addition to the sum to which the eldest son was entitled under the will of 1823. Looking at the last part of this codicil, if his Lordship were left to conjecture, he would suppose that it was the intention of the testator to place the eldest son on a footing only with his two other sons. But this appeared to be mere conjecture, and could have no weight in opposition to the distinct and express terms made use of, "that the sum so given should be in addition to the sum to which the eldest son would be entitled under the will of December, 1823." He might further remark, that if the construction contended for were permitted, the codicil would be altogether unnecessary, as by the argument the will placed the eldest son in the same position as the two other sons. This was the case without the codicil; therefore the making of the codicil, if this was the intention of the testator, was altogether unnecessary. He might still farther remark, that the testator having in certain other codicils given a sum of 15,000*l.* to each of his younger sons, directed that these payments should be made with a provision, that in the settlement of the property under the residuary clause, these sums should not be charged with interest; the consequence of which would be, that the two younger sons would be placed in a better situation than the eldest son—and this might have operated on the testator's mind. This also was mere matter of conjecture, and the terms made use of in the codicil were so clear and explicit as to admit, in his mind, of but one interpretation, namely, that this sum of 15,000*l.* was to be in addition to the sum to which the eldest son would be entitled under the will, to which reference was made. As the question concerned a very large sum of money, he had looked at the will and codicils with much anxiety, and he could not bring himself, notwithstanding any doubts that might have been raised upon the expressions of the will, to pronounce any other judgment than, that the 15,000*l.* was to be in addition, as expressed in codicil, and not in substitution of the provision made by the will.

*Halford v. Halford*, Gray's Inn Hall, June 7th and July 1st, 1834.

### Eschequer of Pleas.

#### CHARGING DEFENDANT IN EXECUTION.—MARSHAL'S DEATH.

*Where the marshal is dead, and there is consequently no one at the prison to receive a prisoner charged in execution, the Court will enlarge the time for rendering him.*

In this case a rule for charging a defendant in execution had been obtained, but in consequence of the marshal's death, there was no one at the King's Bench Prison who could receive the defendant.

*Alderson, B.*, granted further time to render the defendant.

*Harris v. Davis*, E. T. 1834. Excheq.

#### PAYMENT OF MONEY INTO COURT.—AWARD.—COSTS.

*If costs are to abide the event of a cause referred, and the award finds that the plaintiff had no cause of action, except as to 10*l.*, which have been paid into court, the plaintiff is liable to the costs.*

On shewing cause against a rule *nisi* for an attachment for not paying costs pursuant to the Master's allocatur, it appeared that an action had been brought for the recovery of a certain sum alleged to be due from the defendant to the plaintiff. Ten pounds were paid into Court. The cause, with all matters in difference, was referred to an arbitrator. He found that the plaintiff had no cause of action, but that a sum of 10*l.* lent by the plaintiff to the defendant's wife had been paid into Court. The award was treated as in favour of the defendant, and the costs taxed accordingly. On the Master's allocatur, the rule *nisi* for an attachment for non-payment of costs was accordingly obtained. It was submitted, first, that all matters in difference having been referred to the arbitrator, he had full power over the 10*l.* paid into Court; and secondly, that as the money paid into Court could only be paid in on payment of costs up to the time of payment, it was an admission that there was at one time a cause of action. The award was therefore substantially in favour of the plaintiff.

*Parke, B.*, with whom *Bolland, B.* and *Alderson, B.*, concurred, was of opinion, that as the costs were to abide the event, they ought clearly to be paid by the plaintiff, for the award must be taken to be in favour of the defendant. When the 10*l.* was paid into Court, that sum was, in effect, struck out of the declaration, and therefore no longer a matter in difference. The present rule for an attachment must therefore be made absolute.

Rule absolute.—*Dawson v. Garrett*, E. T. 1834. Excheq.

#### SERVICE OF DECLARATION BY STICKING IT UP IN OFFICE.

*Under what circumstances the Court will not allow a declaration to be served by sticking it up in the office.*

This was an application to be allowed to serve a declaration by sticking it up in the office, and leaving the notice at the Army Pay Office. The action was brought on a bill of exchange made payable at the Army Pay Office, and the writ had been served personally. The affidavit, on which the motion was made, stated that frequent inquiries had been made at the Army Pay Office for the residence of the defendant, but without success.

Lord *Lyndhurst* thought that sufficient ground for the application had not been shewn, more particularly as the writ was personally served.

Rule refused.—*Henning v. Duke*, T. T. 1834. Excheq.

## King's Bench Practice Court.

## DEBTOR AND CREDITOR.—APPROPRIATION OF PAYMENT.

*The creditor is at liberty to apply a payment in discharge of any of the debts due to him by the debtor, unless a specific appropriation is made by the latter.*

In this case, it appeared that the plaintiff, who is now a bankrupt, was an attorney, and the defendant his client. Various business was done by the former for the latter, and various money transactions took place between them, the result of which was Naish became Chitty's debtor in a considerable amount, and in order to secure the payment of a portion of it, three warrants of attorney were given, and judgments entered up. Several sums of money were paid on account, by Naish to Chitty, and a part of them applied to satisfy the first and second judgments. With respect to the third warrant, the difficulty arose as to the mode of applying certain sums in its satisfaction. A part had been realized under an execution; and for that part credit was given. Application was made on the part of Naish to refer it to the master, in order to ascertain, whether the three several judgments entered up by the plaintiff upon the warrants of attorney before his bankruptcy, against the defendant, had been satisfied. Accordingly it was so referred to Master Goodrich, who was directed to certify as to the fact, in order that satisfaction might be entered immediately, and that the costs of the application should be in his discretion. The Master, in his report found that two of the judgments had been entirely satisfied, and that the third, except as to the sum of 69*l.* 12*s.* 7*d.* had also been satisfied. An objection was made by the defendant to the Master's report, as to the third warrant of attorney, for he contended that the whole of the judgment in point of law had been satisfied. It appeared, that the warrant of attorney, on which the remaining judgment was founded, was given to secure the sum of 309*l.* 7*s.* 2*d.*, being the balance of an account settled between the plaintiff and defendant up to the date thereof, as also the further sum of 104*l.* 10*d.*, the amount of two bills of exchange given to the plaintiff by the defendant, which were not then due, making together 413*l.* 8*s.* It was stated, in the defeazance, that in case default should be made in payment of such balance of 309*l.* 7*s.* 2*d.* on the day therein limited for that purpose, the plaintiff should have immediate liberty to levy the same. And he was to be at liberty to levy the amount of the bills if they should not be paid when due, or at any time thereafter. The bills became due, and were not paid, but were renewed, and the renewed ones were also dishonoured, and afterwards paid by the plaintiff; Default was also made in payment of the balance of 309*l.* 7*s.* 2*d.* The plaintiff, in consequence of this, issued an execution for the whole of the 413*l.* 8*s.*, of which sum the sheriff levied 343*l.* 15*s.* 5*d.*, leaving a balance of 69*l.* 12*s.* 7*d.* due to the plaintiff on his judgment.

There were other transactions between them of a pecuniary nature, and by a general account produced before the Master, it appeared that plaintiff, previously to their becoming due, had given the defendant credit for two bills of exchange, as included in the judgment in question; as also with monies received subsequently to the sheriff's levy, exceeding in amount the 69*l.* 12*s.* 7*d.* so remaining due on the judgment. On the part of the defendant, therefore, it was contended, that out of the monies so received the plaintiff was bound to have discharged the judgments, that being to the defendant the most burdensome debt. It did not, however, appear that the defendant had ever required that any of those monies should be so applied. The Master thought that the plaintiff had a right to place them to the other account, the balance in his own favour thereon having invariably exceeded 69*l.* 12*s.* 7*d.*, and that according to the terms of the defeazance in regard to the bills of exchange, the judgment as to the 69*l.* 12*s.* 7*d.* was therefore still subsisting. Accordingly a rule to shew cause was obtained for the review of the Master's report.

On shewing cause against the rule, it was contended, that as no specific appropriation of the money paid to Chitty by Naish was directed by the latter, Chitty had a right to apply the money so paid to the discharge either of a judgment or simple contract debt. The Master's report being in accordance with this principle, it ought therefore to be confirmed.

In support of the rule it was submitted that Chitty ought to have applied the monies paid to him by the defendant, in satisfaction of the judgment debt, rather than the simple contract debt, as the former was the more burdensome debt due to the plaintiff from the defendant.

*Cur. adv. vult.*

*Taunton, J.*—The question is whether the Master is right in his opinion as to the sum of 69*l.* 12*s.* 7*d.* being still due on the judgment. I think that he is. I have read over both the Master's report and the general account current, and I am of opinion that the Master's view of the case was correct, and therefore that the 69*l.* 12*s.* 7*d.* must be considered as still due on the judgment. I think there can be no doubt that where a debtor pays money to his creditor generally, without any specific direction as to the debt in discharge of which it is to be applied, the creditor in that case can apply it in the discharge of any demand which he has against the debtor. No specific appropriation, therefore, having been directed by Naish to be made of the money paid generally to the part satisfaction of the judgment, I think that Chitty was at liberty, if he thought proper, to apply this money to the discharge of the simple contract instead of the judgment debt. I am therefore of opinion that the Master was right, and the present rule must be discharged with costs.

Rule discharged with costs.—*Chitty, gent. one, &c. v. Naish, T. T. 1834, K. B. P. C.*

## WARRANT OF ATTORNEY.—SECONDARY EVIDENCE.—ATTESTING WITNESSES.

*The affidavit of the attesting witness to a warrant of attorney will be dispensed with on proof that he cannot be found.*

This was a motion to enter up judgment on an old warrant of attorney. The difficulty in the case was, that the affidavit of the attesting witness could not be obtained. He was clerk to the attorney by whom the warrant was prepared, and had since absconded from his master's service. The affidavit on which the motion was founded, therefore, was an affidavit of the attorney himself, which verified the handwriting of the defendant and of the attesting witness, and accounted for the absence of his clerk by showing that he had absconded; that he had not, since he left his service, seen him; that he had made diligent search for him, but had not been able to find him. The nature of the search which he made he did not, however, state. But the proper place for inquiring after him was the office of his late master, where he spent the principal part of his time; and an affidavit setting forth that endeavours had been made to find or hear of him there, would have satisfied the rule. In that case the affidavit of the master himself would be sufficient.

*Patteson, J.*, thought, under the circumstances, this was sufficient, and therefore granted a rule.

Rule granted.—*Young v. Showler*, T. T. 1834. K. B. P. C.

## ATTORNEY'S UNDERTAKING.—BREACH OF FAITH.

*If an attorney, in his capacity of attorney, gives an undertaking, the Court will interfere summarily to compel its fulfilment, although it only relates to a money transaction.*

Cause was shewn in this case against a rule requiring an attorney of the Court to take up a note for 200*l.* A person named Gardner, had articulated his son to an attorney as a clerk, and a fee of 200*l.* was to be paid. A promissory note for this sum was given by Gardner to the attorney, upon an agreement, that it should not be negotiated until five years had elapsed from the time of giving it. At the end of eighteen months, it appeared, from the articles not having been stamped at the time of beginning the clerkship, that consequently those eighteen months would not be reckoned within the five years of service required by law, and a separation took place between the attorney and the son of the applicant. Shortly after, proceedings were commenced against Gardner for the recovery of the promissory note for 200*l.*, which he had deposited in the hands of the attorney, on the undertaking that it should not be negotiated until the expiration of five years, he having paid it away to another person. It was contended, that this was an ordinary undertaking, which

another person as well as an attorney could have given, and therefore could not be enforced summarily against the attorney. The mere fact of his being an attorney was not sufficient to authorize the summary interference of the Court.

*Taunton, J.*—The ground on which the application was made, was that according to the agreement, the attorney had undertaken not to negotiate the note until the expiration of the five years, and by his having done so he had committed a breach of faith. The rule, I think, ought to be made absolute, in all its parts, and with costs, for Mr. Gardner was compelled to come to the Court in order to enforce the payment of this bill by the attorney.

Rule absolute, with costs.—*Ex parte Gardner*. E. T. 1834. K. B. P. C.

## THE CLOSE OF THE VACATION.

THIS day the long vacation ends. If the calendar did not remind us of this, we should not need mementoes. The professional haunts are all again becoming peopled. The two last weeks have made a great change as to this. A fortnight ago we might walk from one end of Lincoln's Inn to the other, without seeing a face that we knew—now every other person is familiar. In the performance of our duties we are necessarily condemned to a perpetual sojourn in town, and we are not sorry to see new arrivals every day. The quiet squares of the Inns of Court are now again resounding with the busy tread of business, and the rumble of carriages. The profession, in all its grades and branches, is to be seen at every turn. The events and chit-chat of the vacation are discussed with animation; the deaths, and the promotions. The new Master of the Rolls—the vacant Solicitor-Generalship—and the New Courts of Law, are the chief topics. We need not remind our readers that under the Chancery Regulation Act (3 & 4 W. 4, c. 94, § 24,) the present and all future Masters of the Rolls are to hear and determine all such motions as shall be duly made before him, and all pleas and demurrers which shall be set down before him, (see the Chancery Practice, 28,) so that this Court will now be co-extensive in jurisdiction with the Lord Chancellor and Vice Chancellor's Courts. This may lead to important changes in the disposal of Equity business.

## PROPOSED NEW COURTS OF LAW.

WE have read all the numerous suggestions contained in the public papers on the subject of new Courts of Law and new Houses of Parliament. We presume to think that the proposal we put forward in our last Number (vol. 8. p. 497) is still the only feasible one, either as regards convenience or expence, or the interests of the public or the profession.

For *temporary* purposes—if not for a permanent one—Westminster Hall is the place for the Houses of Parliament, and the present inconvenient Courts of Justice are well adapted, in their existing state, for Parliamentary Committee-rooms, whilst the offices and apartments connected with the Courts may be made available for the officers of Parliament. Thus, at a very small expence, the Legislature may be accommodated.

In the mean time, all the Courts, both of Law and Equity, may assemble in the Halls of the several Inns of Court and Chancery. This will afford an opportunity of proving the truth of our allegation, that the *vicinity of the Inns of Court* is the proper place for permanently holding the Courts of Justice,—not only on account of the convenience of all branches of the profession,—but of suitors, witnesses, and others. This is the very centre of the metropolis, and most particularly desirable to the whole city of London. The facilitating and expediting the transaction of the business of the Courts and the numerous offices connected therewith, will be promoted in various ways,—the advantages of which must be reaped by the public as well as the profession.

We earnestly hope that at all events the opportunity now afforded of making the experiment will not be lost. We understand that the Incorporated Law Society, convinced of the desirableness of the change, and the importance of seizing the present favorable opportunity, intend to hold a meeting on the subject, with a view to bring all the circumstances to the notice of the proper authorities.

## ADMISSION OF SOLICITORS IN CHANCERY.

It is well known, that in order to obtain admission as an attorney in the Courts of Common Law, the party must give notice of his intended application a whole term and

vacation previous to the term of his admission; that is, in order to be admitted in Michaelmas term, he must give notice prior to Trinity term. In the Court of Chancery, however, it is necessary only to give notice immediately before the commencement of the term, on the day after which he intends to be admitted. Thus he may give notice on the 1st of November, and be admitted on the 26th. It is probable that the practice in this respect will be made uniform.

The lists which we have been accustomed to publish, of the admission of attorneys, have not included the names of solicitors in Chancery, in consequence of the lateness of their notices. The following are the names of the persons at present entered with the Secretary of the Master of the Rolls:

1. Richard Stockley, of Fish Street Hill:  
 Articled to Joseph Smith, of Coleman Street.  
 Assigned to, 1. J. B. Smedley, of New Inn.  
 2. Edwin Smith, of Bridge St.  
 3. Charles Elmes Parker, of  
 Princes Street, Spital Fields.
2. Edwin Latham Brickwood, of Stanstead  
 Abbots, Herts:  
 Articled to C. E. Dampier, formerly of Raymond Buildings, and afterwards of Mecklenburg Square.
3. George Theodore Wingate, of Park Road,  
 Clapham:  
 Articled to Francis Philip Wingate, of  
 Stonehouse, Devon.  
 Assigned to Charles Chatfield, of Angel  
 Court.

## ANSWERS TO QUERIES.

### Common Law.

PAYMENT INTO COURT UNDER £2. VOL. 8, p. 495.

If the original demand was above 40s., a payment of a less sum into Court, which is taken out by the plaintiff, clearly does not entitle the defendant to costs. On the contrary, up to the time of the payment into Court he must pay the plaintiff's costs. The statute 43 Eliz. c. 6, (extended to Wales and the counties palatine by the 11 & 12 W. 3, c. 9.) restricts the plaintiff's right to no more costs than damages, to actions where the debt or damages *recovered* therein shall not amount to the sum of 40s., certified by the Judge before whom the cause is tried. Tidd. 8 ed. p. 987. Now it cannot be contended for a moment, that the taking of money out of Court is a *recovery* within the statute, for the recovery there meant is by *verdict*. It has been held, that where a defendant pays into Court upon the common rule a less sum than he was arrested for, and the plaintiff takes it out of Court, he is not entitled to costs. Tidd. 8 ed. p. 1021, and the cases there cited. E.

**Law of Property and Conveyancing.**

SETTLEMENT. VOL. 8, P. 495.

I think the second son is entitled in tail; for previously to the 3 & 4 W. 4, c. 74, a vested remainder in tail could only be conveyed by *fine*. See 3 Co. 84 a. J. W.

SALE.—MORTGAGE.—AUCTION DUTY. VOL. 8, P. 112.

There can be little doubt, I think, but that the auction duty in this case must be paid upon the 15,500*l*. It appears *that* was the sum for which the lot was knocked down at the sale, and consequently the purchase money, as respects the auction duty. If, on the other hand, the lot had been bought at the sale for 5,300*l*. (subject to the sum of 10,200*l*., part of the original mortgage,) the case would have been different. 15,500*l*. was the purchase money, and though the purchase conveyance may express otherwise, I imagine it will not alter the case. In analogy to and confirmation of this opinion, is the fact, that the purchase deed must bear the *ad valorem* stamp on the 15,500*l*. I am not aware of any case which has been decided on the question asked.

S. W.

**QUERIES.****Landlord and Tenant.**

NOTICE TO QUIT.

A landlord, by a written agreement, let to a tenant a dwelling-house and premises from year to year, at an annual rent, payable quarterly, which contains the following clause:—"And the said landlord further agrees with the said tenant, that should he, the said tenant, be mindful to quit the said house and premises, the said tenant shall give to the said landlord notice or warning in writing, to expire at the quarter day next after such warning or notice." The question is, what notice the tenant is bound to give? L. T.

NOTICE TO QUIT.

A., the landlord, let certain premises to B., the tenant, as yearly tenant from *Old Michaelmas Day*. The landlord gave the tenant notice that he should quit at Michaelmas next. The notice does not specify *Old Michaelmas*. Can the landlord turn the tenant out at *Old Michaelmas* next, or cannot the tenant treat the notice as irregular altogether? The premises were let on a parol demise. I believe the landlord gave the notice to quit.

A CONSTANT READER.

NOTICE TO QUIT LODGINGS.

A. took lodgings of B., entering at Michaelmas, but without any express agreement. He has occupied ten years, and has paid his rent quarterly. Is he bound to give six months notice to quit? and must that notice expire at Michaelmas? R. C. B.

**Practise.**

PRISONER.—SUPERSEDABLE.

If a prisoner becomes supersedable *for any cause whatever*, is he liable afterwards for the amount of the debt and costs? and if so, are his goods, &c., only liable? E. S. H.

**THE EDITOR'S LETTER BOX.**

COMMENTARIES ON THE NEW STATUTES

The COMMENTARIES on the New Statutes passed in the 4 and 5 W. 4, effecting alterations in the Law, are now complete, and contain—The Poor Law Act; the Acts relating to the Criminal Law; the Acts relating to the Common Law; the Acts relating to Conveyancing; the Acts relating to Equity; and the Acts relating to Miscellaneous Matters. Price (with the Title Page and Index) 7*s*.

The communication on the present defective method of legislating, shall be considered.

We thank C. N. for his Letter on the Practice at the Judges' Chambers.

The subject of Impraunces, as lately decided, will be fully considered in the next number. The Letter of T. B. shall be attended to.

We fear that V.'s communication will not assist the case of the Clerks of Attorneys; but we will reconsider it.

A Correspondent states that there is a misprint in the query, p. 495, "Devise—Life not in Being." It should have been stated that the estates were to be transferred after C. D.'s death to E. F., when E. F. attained the age of 24, instead of 21 years.

We cannot agree with R. S. regarding the lectures he alludes to. His objection to the hour appointed seems to apply to a few persons only. On all these occasions the convenience of the majority must determine the arrangement.

The Queries and Answers of T. B.; A. P. B.; and H. G. S., have been received.

The extract with which we have been favoured by Aspiro, is not sufficiently of a legal nature to be admissible.

R. B. W. informs us that he will communicate the particulars of the case to which we alluded, to our Correspondent E. S., if it will assist his application to the Court.

The Title Page, Contents, and Index to the Eighth Volume, are now ready, and may be obtained of the publisher with this number, without any extra charge.

The Fourth Part of the Digest will be published in a fortnight, which will complete the Digest of all Reported Cases for 1834. Our Subscribers will find it convenient to bind the Digest and Commentaries together: they will then have all the *Statutes and Decisions of the year* in one volume, and, we submit, at very small cost.

# The Legal Observer.

Vol. IX. SATURDAY, NOVEMBER 8, 1834. No. CCXXXVI.

———"Quod magis ad nos  
Pertinet; et nescire malum est, agimus.

HORAT.

## THE CENTRAL CRIMINAL COURT.

THE new Criminal Court of the Metropolis was opened in due form on the 1st of November. There was a full attendance of Judges, and most of the principal Courts were represented. The Lord Chancellor appeared in person. The King's Bench was present in Mr. Justice Taunton and Mr. Justice Williams. The Common Pleas in its Chief Justice, Mr. Justice Park, Mr. Justice Gaselee, and Mr. Justice Bosanquet; and the Exchequer in all its puisne barons, Mr. Baron Parke, Mr. Baron Vaughan, Mr. Baron Bolland, Mr. Baron Alderson, and Mr. Baron Gurney. The Bankruptcy Court, whose Judges are permitted by the act to employ their spare time in criminal business, was represented by the Chief Justice and Mr. J. Cross (both very competent men to preside in this Court). The Admiralty Court, which may be said to be now merged, to the extent of its criminal jurisdiction, in the Central Criminal Court, sent Sir John Nicholl and Sir Herbert Jenner; and Mr. Recorder, Mr. Serjeant Arabin, the Lord Mayor (who, by the bye, if city precedence had been attended to, should have been mentioned first,) closed the list of distinguished persons. The usual ceremonies were gone through, and the days announced for the sittings of the Court.

Whoever may claim the merit of the establishment of this Court, we certainly

\* We have all along given the measure our support, and have from the first stated that it does not owe its origin or plan to the Lord Chancellor. To him, however, is to be ascribed the merit of having taken it up and carried it through. The bill is said, by the

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cannot but express our satisfaction at the circumstance. We have already stated its provisions<sup>b</sup> and effect, and dwelt on its public importance. We also consider that it will greatly benefit the profession. We have always declined to notice, far less to record, the scenes which have from time to time taken place at the Old Bailey—so palatable to newspaper readers. No circumstance can be so happy for the reporter as "a legal fracas," or "a curious scene;" and certainly nothing can tend so much as these exhibitions to injure and degrade the profession in the eyes of the public. It is too notorious, that in the Criminal Courts of the metropolis, business has been conducted in worse taste than in any other. We have here seen counsel forget not only all respect for the Bench, but all respect for themselves; we have here seen attorneys resort to means and take up expedients disgraceful in the extreme; we have here seen the faults of a few practitioners throw a shade over the whole Court; we have here also seen Judges give way to petulance and ill-breeding. We prefer making these remarks now, because—at any rate at the time we write—no similar scene has occurred in the new Court. It must be a very extreme case to induce us to make a remark on an individual in practice; we make no war against particular persons; but we must express a hope, that with the new Court may arise a new school of practitioners—that we shall cease to consider the persons exclusively practising in this Court as belonging to an inferior grade in the

*Times*, to have been conceived in the first place by Mr. Shelton, to have been settled by Sir John Sylvester, and to have been handed to the Chancellor by Mr. Charles Phillips.

<sup>b</sup> See 8 L. O. p. 466.

C

profession—that we shall not see the administration of justice impeded and defaced by indecent exhibitions of temper, or open defiance of professional superiors. We have the most sufficient proof that criminal business can be conducted with perfect order and becoming dispatch, in every assize town. Why is the metropolis to bear the disgrace of being worse off than the provinces? Why is her great Criminal Court to be the place in which all the intestine broils of lawyers are to be settled? Jealous of the honour and good name of our profession, we, who in common with all its members, have witnessed the injury which is done to it, with the public, by such scenes, would fain trust that they are never again to be enacted—that lawyers will not here forget to be gentlemen, and that the manners and practices—we hardly make use of language too strong—of the criminals at the bar, may be confined to them. We trust that these observations may not be without effect; and we shall think it our duty to see that they are attended to.<sup>c</sup>

We may now briefly notice an edition of the Criminal Court Act which has been just published,<sup>a</sup> but which seems chiefly intended as an announcement that Reports of Cases in the new Court will be published by its editor—which we are glad to learn. The following additions to the second section of the act may be useful. We shall quote the section and the notes, which are by Mr. Windeyer.

“Sec. 2. And be it further enacted, that it shall be lawful for his Majesty, his heirs, and

<sup>c</sup> An intelligent correspondent suggests the following remedy:—“In the belief that I have made out a case for some constitutional and safe remedial measure, I now hasten to conclude with the following suggestions, in the hope that they may be honoured with a place in your excellent journal.

“1st. Let there be in each inn of court a council of discipline, such as have existed time out of mind in France and other countries, elected annually by all the barristers of the inns, and composed of persons having certain qualifications. 2d. Let them have power to admonish in public or private, or suspend from practice, subject to appeal to judges in the case of suspension *only*. 3d. Let them proceed inquisitorially, or on complaint. 4th. Let all courts be bound to certify to them any offence coming to the knowledge of such courts.”

<sup>a</sup> The Central Criminal Court Act, with Explanatory Notes, by Richard Windeyer, of the Middle Temple, Esq., Barrister at Law. Saunders & Benning.

successors, from time to time to command and cause to be issued commissions of Oyer and Terminer to inquire of, hear, and determine all treasons, murders, felonies, and misdemeanors committed within the city of London and county of Middlesex, and those parts of the counties of Essex, Kent, and Surrey, within the parishes of Barking,<sup>d</sup> East Ham,<sup>e</sup> West Ham,<sup>f</sup> Little Ilford, Low Layton, Walthamstow, Wanstead St. Mary,<sup>g</sup> Woodford<sup>h</sup> and Chingford, in the county of Essex; Charlton,<sup>i</sup> Lee, Lewisham, Greenwich, Woolwich, Eltham, Plumstead, St. Nicholas Deptford, that part of St. Paul Deptford which is within the said county of Kent, the liberty of Kidbrook, and the hamlet of Mottingham,<sup>k</sup> in the county of Kent; and the borough of Southwark, the parishes of Battersea,<sup>l</sup> Bermondsey, Camberwell,<sup>m</sup> Christchurch, Clapham, Lambeth,<sup>n</sup> St. Mary Newington,<sup>o</sup> Rotherhithe,

<sup>d</sup> Barking includes the four wards called the Town, Chadwell, Ilford, and Ripple. *Population of Great Britain (comparative account) prepared by Mr. Rickman, and ordered to be printed by the House of Commons 19th October, 1831.*

<sup>e</sup> A small parcel of land belonging to East Ham parish lies between two detached portions of the county of Kent, which are on this side of the river. In the common maps the three are confounded together. The two pieces of land in Kent county have only five houses upon them, and offences committed thereon have always been tried at Maidstone; they belong to Woolwich parish. Had they belonged to East Ham parish, a question might have been raised, looking to the language used with respect to St. Paul, Deptford, as to whether they were included in the jurisdiction of the Court. The small parcel of land belonging to East Ham parish and Essex county, lying between the two portions belonging to Kent, has no houses upon it. I have to acknowledge myself indebted to the politeness of the Vicar of East Ham for a careful and accurate letter, from which I have drawn the above particulars.

<sup>f</sup> West Ham includes All Saints, Churchstreet, Plaistow, and Stratford wards. Pop. Returns.

<sup>g</sup> Called Wanstead simply in the Population Returns.

<sup>h</sup> Called Woodford St. Mary in the Population Returns.

<sup>i</sup> Described in the Population Returns as “Charlton next Woolwich.” There is another Charlton in the same county, near Dover.

<sup>k</sup> Is a Hamlet of Eltham. Pop. Returns.

<sup>l</sup> Includes Penze Hamlet. Id.

<sup>m</sup> Includes Peckham, Dulwich, and part of Norwood. Id.

<sup>n</sup> Included in Lambeth parish are the districts of St. John Waterloo, Kennington, Brixton and Norwood, besides the district which remains attached to the parish church. Id.

<sup>o</sup> Newington Butts includes Walworth. Id.

Streatham, <sup>p</sup> Barnes, Putney, that part of St. Paul Deptford which is within the said county of Surrey, Tooting, Graveney, <sup>q</sup> Wandsworth, Mer-ton, Mortlake, <sup>r</sup> Kew, Richmond, Wimbledon, the Clink Liberty, and the district of Lambeth palace, in the county of Surrey, and also commissions of gaol delivery to deliver his Majesty's gaol of Newgate of the prisoners therein charged with any of the offences aforesaid, committed within the limits aforesaid; and it shall be lawful for the justices and judges of the Central Criminal Court aforesaid, or any two or more of them, to inquire of, hear, determine, and adjudge all such treasons, murders, felonies, and misdemeanors, and all treasons, murders, felonies and misdemeanors, which might be inquired of, heard, and determined under any commission of Oyer and Terminer for the city of London and county of Middlesex, or commission of gaol delivery to deliver the gaol of Newgate, or which, in case the parts of the counties of Essex, Kent, and Surrey respectively comprised within the limits aforesaid had been counties of themselves, might have been inquired of, heard, and determined under commissions of Oyer and Terminer and gaol delivery for such counties, and to deliver the said gaol of Newgate at such times and places in the said city or the suburbs thereof as by the said commissions shall be appointed, or as the said justices and judges by virtue and in pursuance thereof, or any two or more of them, shall appoint, and to award and issue all precepts and process, and use and exercise all powers and authorities belonging to justices of Oyer and Terminer and Gaol delivery: Provided always, that such Court shall have power and jurisdiction to proceed on every such commission so issued as aforesaid and act under such commission until a new commission shall be issued."

By section 22, the new Court is authorised to try offences committed on the high seas. To this the following note is ap-

<sup>p</sup> Upper Tooting is a hamlet of Streatham parish. *I. Pigot's Directory*, 497. See next Note.

<sup>q</sup> There are no such parishes as Tooting or Graveney. The above is copied from the folio edition of the Acts printed by the King's Printer; but both in that and the octavo edition, proceeding from the same authorised source, the misprint of a comma for a hyphen has led to what might prove a serious blunder. The village commonly called Tooting, is divided into Upper and Lower. Upper Tooting, as we have seen, is a hamlet of Streatham, and the proper name of the parish to which Lower Tooting belongs is Tooting-Graveney. It is so called in the Population Returns; and upon application to the Rector of Tooting-Graveney, he has done me the kindness to take the trouble of confirming their accuracy.

<sup>r</sup> Mortlake includes East Sheen. Pop. Returns.

pended, with which we shall close our extracts.

The wording of this and the third clause raises considerable doubt as to the mode in which the venue should, in future, be laid in indictments for offences committed upon the high seas. It will be seen that the third clause positively directs that "in *all* indictments and presentments preferred and tried before the said justices and judges, the venue laid in the margin shall be as follows: 'Central Criminal Court to wit;'" but if the third clause is to be construed as having mainly in view the consolidation of the several parts of counties, &c. enumerated in the second clause, these words, large as they are, will not be sufficient to alter the present practice with regard to laying the venue in the case of offences committed upon the high seas. Such a consolidation was clearly necessary, and that having been effected by the declaration in the first part of the clause, it would seem that the two subsequent provisions became unavoidable. If they be merely pendants to the first part of the clause, they must be construed with reference to its language, and that would confine the meaning of "all indictments and presentments preferred and tried before the said justices," to indictments and presentments arising in "the district situated within the limits of the jurisdiction *hereinbefore* established." Further, if the third clause is to be construed as above suggested, "all indictments" cannot refer to indictments for piratical offences, because the last part of it contains a direction not at all applying to such indictments. It may be added that the whole wording of the twenty-second clause seems to imply that the material facts should, in indictments for piratical offences, continue to be averred to have taken place "upon the high seas within the jurisdiction of the Admiralty of England," which does not support the supposition that the legislation intended the venue in the margin of such indictments to be "Central Criminal Court to wit." On the other hand it may be contended that the third clause is to be construed as containing three separate and independent provisions; that the second of them applies to indictments for offences arising in the jurisdiction afterwards as well as in that previously given, and that the apparent discord between that provision and the twenty-second clause may be got over by framing the indictment with a videlicet. I must confess that this appears to me to be against the true construction of the third clause, and that I am inclined to think the point was altogether overlooked; but as this mode is the only one by which the two clauses can be at all reconciled with each other, I have, amidst the doubt in which the matter is involved, felt compelled to adopt it in the form given in page 26.

We have been informed, since the above was written, that the Central Criminal Court



Bill was prepared by Mr. John Clark, the present Clerk of the Sessions. Some materials for the Bill had been left by his predecessor, Mr. Shelton, but the principal merit belongs to Mr. Clark. We understand that his plan was altered in some respects, but by no means improved. The rumour about Mr. C. Phillips having given the Bill to the Lord Chancellor is without foundation.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

### No. VIII.

#### THE ACT FOR THE BETTER ADMINISTRATION OF JUSTICE IN BOROUGHES.

4 & 5 W. 4, c. 27.

THIS act has been passed to remedy the following inconvenience:—The justices of the peace of certain boroughs not being empowered by charter or otherwise to hear and determine felonies at the general sessions of the peace held for such boroughs, were required to send for trial at the general assizes for the county wherein such borough was situated every person charged with felony, which delayed the administration of justice, and increased the expenses of the county. It is therefore enacted (§ 1), that the justices of the peace, and any such justice acting for any borough or franchise in England, not being empowered by charter or otherwise to hear and determine felonies, may commit every person charged with any such felony as the court of quarter sessions may have jurisdiction to try, to be tried at the general quarter sessions of the peace for the county; and the justices of the peace acting in and for such county, are empowered to try persons so committed at the general quarter sessions.

By the 2d sec. it is also enacted, that the justices of the peace acting for a borough may commit to the gaol of the county or shire in which such borough may be situate, to be tried at the general quarter sessions of the peace in and for such county, any person charged with a felony which the said court of quarter sessions may have jurisdiction to try, and to the trial of which the jurisdiction of the justices of such borough at the general sessions of the peace in and for such borough or franchise does not extend; and the justices of the peace acting

in and for such last-mentioned county are authorized to try any such person.

In all such towns which have a recorder and a prison fit for the confinement of prisoners, the magistrates of such town shall commit to the prison of such town all persons charged with having committed within such town any felony or misdemeanor which might, if the same had been committed out of such town and within the body of any county, have been tried by the justices of quarter sessions of such county; and the court of quarter sessions of such town shall have the same authority to inquire of, hear, determine, and punish any persons charged with such felonies or misdemeanors as the courts of quarter sessions of counties have; which quarter sessions the justices for such town or franchise are required to hold. (§ 3.)

#### THE PRACTICE RELATING TO IMPARLANCES.

SINCE the passing of the Uniformity of Process Act, some question has arisen, whether the right of defendants to an imparlance still remains. We should have imagined, that by the operation of the provisions contained in that statute, the defendant was deprived of that right. Mr. Justice *Taunton*, however, is of a different opinion, as appears from his decision in the case of *Frean v. Chaplin*.<sup>a</sup> In that case the plaintiff declared in *Hilary* vacation, and in due time, according to the practice of the Court, ruled the defendant to plead, and demanded a plea. It being a town cause, the time for pleading allowed according to the practice was of course four days. The defendant, however, did not plead within that time, and on the sixth day the plaintiff signed judgment for want of a plea. A rule *nisi* was afterwards obtained for setting aside this judgment for irregularity, in being signed too soon; the defendant, as was alleged, being entitled to an imparlance. Cause having been shewn against this rule, Mr. Justice *Taunton* delivered this opinion.

“It seems to me, that under circumstances similar to the present, the defendant would, by the old practice, have been entitled to an imparlance. It seems to me,

<sup>a</sup> 2 Dowl. P. C. 523.; 8 L. O. 508. S. C.

that there is such a thing still as an imparlance. I do not know of any act of parliament which abolishes the right of the defendant to imparl, where he would have been entitled to it before the passing of the recent act. I have been referred to the Uniformity of Process Act; and it has been urged, that since the provisions contained in sect. 11 of that act, there cannot be any such thing as an imparlance. I do not see that that section has done more than to give the plaintiff a greater facility of proceeding; but it does not remove the privilege of the defendant to have an imparlance in cases where, before the passing of the recent act, he would have been entitled to imparl. If he had a right to imparl, the judgment was irregular, and therefore ought to be set aside."

Now, with all becoming humility, we cannot avoid differing from the learned Judge, in the view he has taken of the practice on this point; and our reasons for so doing are these.

The Uniformity of Process Act (2 and 3 W. 4, c. 39), introduced a new set of writs, and pointed out a new mode of proceeding upon them, with some exceptions, in which, according to the provisions of the statute, the proceedings were to continue to be as they had been previous to the introduction of that statute. Thus, in sec. 1, with reference to the writ of summons, it is provided that "such writ shall be issued by the officer of the said Courts respectively, by whom process serviceable in the county therein mentioned, hath been heretofore issued from such Court, and every such writ may be served in the manner heretofore used in the county therein mentioned, or within two hundred yards of the border thereof." Again, with reference to the writ of *capias*, it is provided that, "if any defendant be taken or charged in custody upon any such process, and imprisoned for want of sureties for his appearance thereto, the plaintiff in such process may, before the end of the next term after the detainer or arrest of such defendant, declare against such defendant, and proceed thereon in the manner, and according to the directions contained in a certain act of parliament, made in the 4th and 5th years of the reign of King William and Queen Mary, intituled, "*An Act for delivering Declarations against Prisoners.*" Again, in ss. 5 & 6, with regard to proceedings in outlawry, it is directed that the plaintiff may proceed to outlawry and waiver, in the same manner as he might previous to the act being passed,

subject, however, to certain restrictions. Again, by s. 8, in proceeding on the writ of detainer, it is provided, that they "shall be as against prisoners in the custody of the sheriff." Throughout, therefore, where it was intended that the former practice should be preserved in proceeding on the new process, there is a direct reference to it, and an enactment introduced enforcing its adoption. It is fair to conclude, therefore, that where provisions are made inconsistent with the old practice, and referring in no way to it, the intention of the legislature was, that the old practice in that particular branch should be abolished. Now, by s. 11 of the above act it is provided, "That if any writ of summons, *capias*, or detainer, issued by the authority this act, shall be served or executed on any day, whether in term or vacation, all necessary proceedings to judgment and execution may, except as hereinafter provided, be had thereon without delay, at the expiration of eight days from the service or execution thereof, on whatever day the last of such eight days may happen to fall, whether in term or vacation." In the provisoes, no reference is made to an imparlance. This provision as to proceedings after declaration is evidently independent of the terms. But the practice of imparlance depends entirely upon them. The terms of the provision, therefore, being inconsistent with a practice which depends upon the terms, must be considered as abolishing it; on the same principle that a subsequent statute on the same subject as a former one, inconsistent in its provisions with the provisions contained in that former one, virtually repeals it. (See Dwarries on the Statutes. p. 673.)

Mr. Justice Taunton says, "I do not know of any act of parliament which abolishes the right of the defendant to imparl, where he would have been entitled to it before the passing of the recent act." It is perfectly possible, that no statute may have directly repealed or abolished the former practice; but surely the provisions contained in s. 11, above cited, are inconsistent with that practice, and therefore must be considered a virtual abolition of it. His Lordship says, "it seems to me that there is such a thing still as an imparlance." It is, however, difficult to conceive how it can now exist, if the provisions of the act are to be put in force. But his Lordship observes, "I do not see, that that section has done more than to give the plaintiff a greater facility of proceeding; but it does not remove the privilege of the

defendant, to have an imparance in cases where, before the passing of the recent act, he would have been intitled to imparl." If the section does give the plaintiff a greater facility of proceeding, it is a facility which from the terms of the provision, is inconsistent with any reference to the terms, and therefore cannot be consistent with the existence of an imparance, which is wholly dependent on them. Although, therefore, it does not in words deprive the defendant of his privilege of imparling, it does so virtually.

If we look to the former practice, we shall see that the mode in which a defendant was deprived of his right to imparl was entirely by a reference to the terms. In *Edensor v. Hoffman & another*,<sup>b</sup> the Court of Exchequer, in construing 7 Reg. Gen. T. T. 1 W. 4, held, that although that rule directed, "that upon every declaration delivered or filed on or before the last day of any term, the defendant, whether in or out of any prison, shall be compellable to plead as of such term, without being entitled to any imparance;" the defendant was not deprived of his imparance, except in cases where the writ, appearance, and declaration are of the same term. The present mode of proceeding after service or execution of the writ, is directed to be independent of the terms.

If an authority were wanting for the opinion here expressed, and which appears to be the result of the plain construction of the act of parliament, we might cite that of Mr. Tidd, in his fourth Supplement, p. 127, where he observes, "But now, as the time for pleading is no longer regulated by terms, but the proceedings may be had on writs, except at certain times, in term or vacation; the practice of imparling is, it seems, abolished by the statute 2 W. 4, c. 39, so far as it is dependent on the terms; but some of its consequences, as affecting particular proceedings, such as pleas to the jurisdiction or in abatement, or claiming consuance, &c., may still remain."<sup>c</sup>

By 2 Reg. Gen. H. T. 4 W. 4,<sup>d</sup> it is ordered, "that no entry of continuances by way of imparance, *curia advisare vult*, *vicecomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings, except the *jurata ponitur in respectu*, which is to be retained. Provided that such regulation shall not alter or affect any existing rules of practice as to the

time of proceeding in the cause." This rule does not, of course, determine whether imparances are to be discontinued or not; but the direction that they shall not be entered is quite consistent with their abolition. It is more than probable, that at the time of forming this rule, the state of a record, when made up according to the old practice, was only made the subject of observation, without at all referring to the consequences which the provisions of the Uniformity of Process Act would produce in the practice as to imparance. The proviso in the rule seems to justify this presumption, as that shews, that its framers wished cautiously to abstain from any interference with the times of proceeding in the cause, to which imparance must be referred.

Upon the whole, therefore, we cannot avoid thinking, that were the opinion of Mr. Justice Taunton reviewed, a different decision would be pronounced on the practice of imparances.<sup>e</sup>

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#### WARRANTS OF ATTORNEY TO SUE AND DEFEND.

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SOME doubt has arisen from the language of 4 Reg. Gen. H. T. 4 W. 4. (Pleading Rules), as to warrants of attorney to sue and defend. In the Common Pleas it is still required by the officers, that the warrants of attorney to sue or defend should be filed at the Warrant of Attorney Office; the language of the above Rule being, "No entry shall be made on record of any warrants of attorney to sue or defend." On considering the language of this rule, it should seem that in the Common Pleas it is still necessary that the warrants should be filed; and the practice is not affected by 1 Reg. Gen. H. T. 2 W. 4, § 1; for the language of that rule is, "warrants of attorney to prosecute or defend shall not be entered on distinct rolls, but on the top of the issue roll." That rule was only intended to alter the practice previously prevailing in the Common Pleas, but not in the King's Bench, to enter the warrants on distinct rolls, which were bound up in the bundle of common rolls in that Court. Even in the King's Bench, however, previous to the time of Chief Justice Wright, who lived in the reign of James 2, the

<sup>b</sup> 1 Dowl. P. C. 304.

<sup>c</sup> See Dowling's Prac. p. 118.

<sup>d</sup> Ib. App. 6.

<sup>e</sup> In a case mentioned before Mr. Justice Littledale, on last Monday, his lordship took a similar view of the subject of imparance.

warrants were entered on a separate roll. The effect of the latter rule, therefore, only was to reduce the number of rolls used in the Warrant of Attorney Office in the Common Pleas, but not to affect the practice of filing the warrants of attorney with the clerk of the warrants. Upon the whole, therefore, it seems necessary that they should still be filed. How far advantage may be taken of the omission to file them, is a matter of further consideration.

By R. H. 2 & 3 Jac. 2, in the Common Pleas, it is ordered, that "the clerk of the treasury shall not sign or seal any record of *nisi prius*, unless the same be first signed or stamped by the clerk of the warrants or his deputy; nor shall the exigenter receive any *pluries capias*, in order to make an *exigent* or proclamation thereon, before the same is so signed or stamped." And again, by R. M. 5 G. 2, C. P., it is ordered, that no judgment whatever (except final judgments upon *postea*s and writs of inquiry and *non pros.*'s) shall be signed by any of the prothonotaries, unless the stamp of the clerk of the warrants be first impressed on the paper whereon such judgment is to be signed, whereby it may appear that warrants of attorney are duly filed. The want of a warrant of attorney, however, is aided after verdict by the Statutes of Jeofails (32 Hen. 8, c. 30, § 1; 18 Eliz. c. 14, § 1). By the 8 Hen. 6, c. 12, § 2, it is provided, that a misprision of the clerk in the warrant may be amended, in affirmance of the judgment. The result of these rules, therefore, is, that the officers of the Court are entitled to insist upon the warrants of attorney being filed; but the omission of such filing does not affect the validity of the proceeding. If the officers should refuse to take the necessary steps, without the warrants of attorney being filed, the Court cannot at present, without some alteration in the practice, compel them so to do. The Master would, however, on taxation, certainly allow the costs of filing the warrants.

With respect to taking advantage of the omission by the opposite party in the course of the cause, it is clear that none such could be taken, as it has been determined that the warrants of attorney may be filed, so as to support the proceedings, at any time *pendente lite*, or before final judgment, though the attorney may be fined for not filing them in due time. See 1 Tidd. Prac 95, ed. 9, and the cases there cited.

It will be seen, that these observations

only apply to proceedings in the Court of Common Pleas, but cannot affect proceedings in the Courts of King's Bench and Exchequer, where the warrants of attorney were never filed.

## PRACTICE AT THE JUDGES' CHAMBERS.

### IRREGULARITY IN WRIT.

Sir,

Perceiving your correspondent's letter T. B. vol. 8, page 412, and being connected with that case, I have to request of you to insert this communication.

Your correspondent's statement is correct as far as it goes; but as he seems to impeach the correctness of the decision, I beg to say Lord Denman has made several similar orders, and upon its being mentioned to him that Baron Alderson had granted orders to arrest *de novo*, he stated that he much doubted the propriety of doing so.

### SECOND ARREST.

An application was made to Baron Alderson to set aside the second arrest so ordered (*inter alia*), because it was not supportable under the circumstances. In this case the first *writ* was set aside for irregularity, and the bail bond cancelled." (See R. M. T. 3 W. 4, s. 10.) Baron Alderson granted an order to arrest *de novo*, for the same cause of action, upon a simple affidavit of the grounds upon which the former arrest was set aside, and a writ was issued upon his lordship's order and a fresh affidavit of debt. It was objected: first, that a judge at chambers has no power to grant an order to arrest *de novo*, in a case like this, and therefore that his lordship's order was a nullity, and did not protect the plaintiff, his lordship having power to order arrests in actions of trover, detinue, trespass, &c. which are not bailable actions, and where the order is necessary to fix the amount, and protect the plaintiff in his holding to bail in non bailable actions. It seems the judges discourage second arrests; for by rule H. T. 2 W. 4, c. 7, it is ordered, that no "second arrest shall take place after *nonsuit*, *nonpros.*, or *discontinuance*, without the order of a judge." Before this rule no application to a judge for liberty to arrest *de novo* in such cases was necessary, the plaintiff after payment of the defendant's costs being, in general, allowed to arrest *de novo*; and those cases are different from this, because in this there is no "nonsuit, non pros., or discontin-

\* Chitty in Arch. Pr. page 75, says, such order would not be granted unless under special circumstances, as where the bail in the first action had forsworn themselves; or where the plaintiff had sustained other injury through the defendant's fraud.

tinuance;" *no paying defendant's costs, which was considered a sufficient punishment in those cases upon the plaintiff.* Baron Alderson, however, on this objection to his power being taken, stated that he had power under the new rules (evidently meaning the before mentioned rule); on its being explained that he had not, he stated that he had power without them. 2d Objection. That a second arrest under the circumstances was vexatious and ("here the defendant had been twice vexed, he has sustained personal inconvenience, having to find bail twice, officers' fees, &c.") against the practice of the Court, and that the second arrest was "a trick to deprive the defendant of the benefit of a merciful law, the rule of law being, '*nemo debet vis vexari pro eadem causa*:'" the first arrest was not got rid off by fraud or subterfuge, but through plaintiff's laches or negligence. The plaintiff's attorney relied on his lordship's order, and his lordship without giving any reason passed over these objections; the defendant was however discharged for other irregularities.

The following cases bear upon the point:

In *Wheelwright v. Joseph*, 5 M. & S. 93.—There plaintiff had sold goods to defendant, a merchant on three months' credit, and had arrested him before the credit expired, but afterwards discontinued and paid costs, and re-arrested for same cause of action. Rule to set aside proceedings, cited 3 T. R. 309. *Ellenborough, C.J.*, said, "where the second arrest appears to be vexatious, the Court will discharge defendant on filing common bail. The plaintiff is bound to know his own case; and if he hold the defendant to bail before cause of action *crassa negligentia*, and this being so, it shall not be permitted to him to harass." *Bayley, J.* said, "whenever the Court see that there are laches in the plaintiff, they will not suffer him to arrest a second time; and surely the plaintiff is guilty of laches, if he arrest before the cause of action accrues: a second arrest therefore would be vexatious." Rule absolute.

So in the case of *Bellisaut v. Levy*, 2 Str. 1209. Affidavit of debt being defective, defendant was discharged from custody. Plaintiff made a fresh affidavit and re-arrested defendant, and next day served rule to discontinue on payment of costs. *Per Cur.* The plaintiff has been too quick, for he should have had the costs taxed and paid before he took out a new writ. Therefore let defendant be discharged upon filing common bail, and the plaintiff pay his costs.

Again in *Wells v. Gurney*, 8 B. & C. 769. There defendant was arrested and discharged for want of an acetiam in writ, re-arrested, and again discharged by *Bayley, J.*, on the ground that the first action was not discontinued. Re-arrested (third time) by trickery, and discharged by Court. *Park J.* said, "the general rule is, that a man shall not be arrested a second time for the same cause of action." *Qu.* a third arrest never allowed?

And in *Molling v. Buckhelts*, 3 M. & S. 153, defendant arrested 10th May, discharged 20th, for irregularity, on filing common bail; 23d June re-arrested, and at time of arrest rule to

discontinue first action served, with appointment for next day to tax costs, when they were taxed and paid; before second arrest a sum more than the amount of the costs was tendered defendant and refused. Court discharged defendant.

In another instance, that of *Imlay v. Ellesden*, 3 East, 309, defendant arrested, and discharged for not declaring; re-arrested upon new affidavit and writ. Rule to discharge defendant. *Contra* affidavits produced, that defendant was a foreigner, and would leave England instantly if discharged, and that he could not have any defence to the action. *Le Blanc, J.* "The rule, that a party should not be holden to bail a second time for same cause of action, would be nugatory, if, after first arrest, on which defendant was detained in custody as long as the rule of law would admit, and from which he was discharged on account of the delay of the plaintiff in not declaring against him in time, the defendant should be again liable to suffer by an arrest *de novo*. Rule absolute.

Also in *Taylor v. Wastneys*, 2 Str. 1248, defendant being arrested for 25<sup>th</sup>, lay in gaol till superseded. Plaintiff meeting him in the street obtains from him a note for 20<sup>th</sup>, and re-arrested him; but Court discharged defendant upon filing common bail, "for it is but a further security, and does not extinguish the former cause of action, which may be declared on still;"—(not after twelve months).

A party discharged from arrest on giving security can be arrested again, if the security turn out to be worthless. *Hamilton v. Pitt*, 7 Bing. 230.

The payment of costs of discontinuance of former action necessary before second arrest. 1 Chitt. Rep.

It is incumbent on the plaintiff to shew that the second arrest is not vexatious. *Archer v. Champney*, 3 Moore, 607.

In *Williams v. Hacker*, 4 Moore, 294, defendant arrested in 1815, again in 1820, cited 1 Stran. 439. The Court said, "the rule for preventing a second arrest for same cause of action was so rigidly adhered to, that where plaintiff was *nonprossed* for want of declaration (and upon which he pays costs) he could not have again arrested for the same cause of action. He must shew, if he can, that second arrest is not vexatious. Defendant discharged.

Defendant having been once arrested, cannot be again arrested for same cause of action. Rule Mich. 15 Car. 2, reg. 2.

Where the plaintiff made a mistake in the affidavit of debt, and the defendant was discharged, and the plaintiff re-arrested him, the defendant was again discharged on account of former arrest, per Lord Tenterden, at chambers, in *Bostock v. White*, 6th September, 1830. See also 1 Tidd. Pr. p. 175, &c. 1 Ch. Arch. Pr. p. 76—7. 1 Chitt. Rep. 161, 273, &c.

When defendant is arrested by assignees in bankrupt's name, by their authority, he cannot afterwards be arrested by them in their name (*query*, unless first action discontinued and costs paid). 1 Chitt. Rep. 276. In *Prescott v. Stevens*, 1 Dowl. P. C. 57, plaintiff sued out

serviceable process and afterwards bailable process, and the defendant pleads the pendency of the former action. The Court refused to relieve the plaintiff by allowing him to discontinue first action, and *Taunton, J.* said, the defendant had a right to plead the pendency of the former action (but, *quere*, otherwise, if plaintiff had applied to discontinue before plea. *Anon.* 1 Dowl. P. C. page 59).

A second arrest is allowable in bailable actions, where defendant is discharged out of custody for alteration in the first warrant, it being an act for which the plaintiff is not answerable, *Harrison v. Borroir*, 6 T. R. 218; so where defendant was before arrested in America, 7 T. R. 470, and where plaintiff had discontinued first suit by reason of a mistake. *Bates v. Bury*, 2 Wils. 381. Where first action was compromised, and a second action for same cause, Court will not interfere, unless the proceedings are vexatious, *Brown v. Davis*, 1 Chitt. R. 161. After a *nonsuit* for a variance. 1 Chitt. R. 273. Where first action was settled by defendant's check, which was dishonored. *Id.* On award, where cause referred to arbitration. *Id.* 2 T. R. 766. On judgment, where he was *not* held to bail in first action. 1 Chitt. 274; and notwithstanding error brought and bail therein. *Kendall v. Cary*, 2 W. Bl. 785. In a Court which proceeds by different methods of redress from that in which the former action was brought, or where former arrest was abroad. 1 Chitt. R. 274 n., and cases there given.

Where first action not bailable, though pending at time of second arrest. *Id.* and *Bishop v. Powell*, 6 T. R. 616; but see 1 Dowl. P. C.

On the same affidavit, where defendant was let out of custody, at his own request, to attend to his business. *Id.* Where defendant was held to bail in first action, and discharged on account of plaintiff declaring for a different cause than that stated in the writ and affidavit, he may be again held to bail in an action on the judgment, *De la Cour v. Read*, 2 H. Black. 278. In a joint action where defendant had pleaded nonjoinder to first, and plaintiff entered a *cassetur billa*. 1 Ch. R. 274. When defendant gets rid of first arrest by *subterfuge* or *fraud*. Ch. Arch. P. 75.

Where plaintiff becomes bankrupt before interlocutory judgment, defendant may be again arrested and held to bail by assignees for same cause. 1 Tidd. 175. *Baines v. Manton*. 1 Ch. Rep. 274 n. 276 n., without discontinuance or payment of costs.

In *Davidson v. Cleworth*, 1 Ch. R. 275 n. first action serviceable and second bailable, it was moved to set aside proceedings. *Bayley* said, here he has not been twice vexed. In the first action the defendant sustained no personal inconvenience; he was not arrested nor bail required; he might well be arrested afterwards. *Ellenborough, C. J.* You have your plea in abatement that another action is subsisting, if the facts will warrant such a plea; but this rule must be refused.

From the cases given it appears clear that a second arrest under the circumstances of *Ar-*

*cher v. Rix* is insupportable, and if properly and fully argued before the Court, would be set aside.

C. M.

## SUPERIOR COURTS.

### Equity Exchequer.

#### TRANSFER OF STOCK.—TRUST.—BENEFICIAL INTEREST.

*A. having a sum of money vested in certain public stocks, transfers the stock to the names of B. and C. and himself, and afterwards makes his will, by which he gives all his estate and effects, stock, &c., to D., and appoints him his executor, and dies: Held, under conflicting testimony as to the testator's intention and knowledge as to the effect of the transfer, that the stock belonged absolutely to B. and C.*

THIS was a bill filed by an executor and sole legatee, and the main object of it was to obtain the declaration of the Court that the two defendants, Dorothy Cluer and Mary Young, held certain stock as trustees for the plaintiff. The facts of the case, as far as it is necessary to state them for the consideration of the present question, were these:—Joseph Eltham, the testator, was an old and infirm man, and was connected by relationship with the plaintiff and defendants, the plaintiff being his step-son, and the defendant Mary Young being his niece, and Dorothy Cluer being the mother of Mary Young. In February, 1832, the testator removed from Limehouse to the residence of Mary Young, and continued to live with her from that period to the end of July of the same year. On the 31st of that month the testator, by the desire of the plaintiff, was removed to the plaintiff's residence. During the period that the testator lived with Mary Young, and before that, he was possessed of stock in the 3½ per cents. to the amount of 225*l.*, of which he sold out 25*l.*, and transferred the remaining 200*l.* into the joint names of himself and Dorothy Cluer and Mary Young, without any consideration. After the removal of the testator to the residence of the plaintiff, he made his will, by which he appointed the plaintiff his sole executor, and bequeathed to him the whole of his property. It also appeared from the pleadings and statements of counsel, that the testator was possessed of some furniture; and the bill prayed an inquiry respecting it.

The other facts of the case, and the arguments of counsel, may be collected from the following judgment:—

Lord Lyndhurst, C. B., after stating the main facts, proceeded thus:—The testator having transferred the stock into the joint names of Dorothy Cluer, Mary Young, and himself, without consideration, it was contended that, after the death of the testator, the two defendants into whose names, together with that of

the testator, the stock was transferred, held that stock as trustees for the personal representative of the present plaintiff. The question is, whether in this transaction the testator intended to transfer a beneficial interest in the stock. The evidence—the material evidence—on the part of the defendants, consists of the testimony of two Bank clerks and two stock-brokers—two were examined, because the stock-broker through whom the transfer was made was in partnership with another. The evidence of the Bank clerks is extremely clear and distinct; they have no connection whatever with the parties, and they say that at the time of the transfer the effect of such transfer was distinctly explained to the testator, and that he appeared clearly to understand the whole operation and effect of it. In this statement both the Bank clerks concurred. The two stock-brokers say also, that previous to the transfer the effect of it was explained to the testator, and he was told, that, if he died, the stock would survive to the two persons, to whose names the transfer was made; that he would have no control over the stock; that he could not dispose of it by will, and that the others would have an absolute property in it; and the testator said that that was what he wished. If the Court believed those four witnesses, it is clear that the testator intended to transfer a beneficial interest in the stock to the defendants; and if he intended to transfer a beneficial interest, independently of points of form, I cannot be required—it would not be consistent with the evidence—to make a declaration that the defendants are mere trustees of this stock for the plaintiff. But then there is this objection made; it is said that this evidence does not support the case made by the answer.

What is the case made by the answer? It is this; that it was the intention of the testator to give a beneficial interest in this stock to Mary Young, and that Dorothy Cluer, her mother, was added, merely for the purpose of protecting this property against the husband of Mary Young, who was a sailor, and by whom, it was apprehended, that the property might be dissipated, if it were left to the wife alone, under his control. This is the case made by the answer, and it does not appear to me that the case so made is at all inconsistent with the testimony of those witnesses to whose evidence I have already referred. *Prima facie*, indeed, it would appear as if the testator intended that Dorothy Cluer should take a beneficial interest in the stock in question, as well as Mary Young; but the circumstance just mentioned explained what was the object in making Dorothy Cluer a co-transferree with Mary Young. The testator said, in substance, that it was his wish that if Dorothy Cluer and Mary Young survived him, they were to take the property; and this does not appear inconsistent with what is stated in the answer, namely, that Mary Young was to take a beneficial interest in the stock, and that Dorothy Cluer was to be a trustee in the stock for the object stated. It does not appear to me that

the evidence is at all inconsistent with the case made out by the answer; and if not, but reconcilable with it, and showing that it was the intention of the testator to transfer a beneficial interest in the stock in question, I do not think I am called upon to disbelieve this evidence, and to make a declaration that the defendants are mere trustees of this stock for the plaintiffs. But all this is upon the assumption of the fact that the case is such as is stated by those witnesses to whom I have referred.

It comes, therefore, for us now to consider, as there is conflicting evidence, how the evidence on the other side operates, and whether it breaks down the case made by the defendants? A great part of the evidence on the part of the plaintiff is adduced to shew, that Mary Young, after the testator had removed to her house, had behaved very neglectfully towards him. He was a very infirm man, upwards of sixty-two years of age, and labouring under some particular personal infirmity; and the impression upon my mind is, that, to a certain degree, and to a considerable degree, he was neglected by Mary Young; but still the evidence operates to this extent—it appeared that the testator laboured under an infirmity of such a description, that it was impossible to keep him clean, or to render him comfortable. This part of the evidence is not unopposed, but I think, on the whole, that the balance of evidence is in support of the assertion that the testator was neglected, to a great extent, by Mary Young; but there does not appear to me to have been neglect to such an extent as would lead me to the conclusion that it was impossible that this old man, being so ill-treated by Mary Young, could have ever intended that she should take a beneficial interest in this property. Such a case is not, in my mind, made out by the evidence.

Then there is another circumstance of this description, namely, that at the time of the testator's removal from the residence of Mary Young, there was a contest between the parties, who were in an humble condition of life; there was a struggle upon the occasion, and Dorothy Cluer insisted upon being paid a few shillings that were due to her by the testator, and Mary Young also insisted upon being paid a few shillings that were owing to her; and these facts are insisted on by the plaintiff as being altogether inconsistent with the idea that the defendants could have supposed themselves entitled to the testator's property; but it does not appear to me, considering the humble situation of the parties, that this can be insisted on.

This, then, brings me to the consideration of that part of the case which is considered as the most important on the part of the plaintiff—namely, the declarations of the defendants themselves. And first, as to the evidence of a person named Jacobs, who says that in November last he had a conversation with Mary Young, at the house of the plaintiff, and that she then and there admitted that she had no

claim to the stock in question, standing in the name of herself, the testator, and Dorothy Cluer; and that if the plaintiff would pay a sum of money, or do something, she would abandon all claims, and that their (her and her mother's) names were used merely to enable them to get the dividends. If this be the case, the defendants are acting a fraudulent part in insisting on this claim; but let us consider the situation of the parties and of the witnesses. Jacobs was acting as clerk to Mr. Isaacs, the plaintiff's attorney; and let us see under what circumstances, and at what time, the declarations are stated to have been made. It was on the 3d of September that the bill was filed, and this conversation is stated to have taken place in the month of November following, whilst the suit was depending, and the defendants resisting the claims of the plaintiff; and it is supposed that Mary Young, under those circumstances, admitted to the clerk of the adverse party, that she had no defence to make to this suit. I am too much accustomed to courts of justice, and to the examination of witnesses, to place much dependance upon evidence of this description. Now if this conversation were true, and if it were considered of such vital consequence, and the plaintiff knowing it, he ought immediately to have applied for leave to amend his bill, and to make this a charge, in order that the defendants might have an opportunity of replying to or denying or explaining the conversation so said to have taken place. It appears to me that this evidence is utterly unworthy of attention. The next point of evidence is of a similar description. It is a declaration stated to have been made in the presence of one Mary Hunt by Mary Young, on the 4th of August, and by Dorothy Cluer on the 15th of September; it is remarkable, that with respect to the declaration supposed to have been made by Mary Young, it is stated to have been made in the presence of one Benjamin Wright, who, although he was examined, had no interrogatory put to him as to this conversation, and he said nothing respecting it. Then with respect to the subsequent conversation supposed to have taken place on the 15th of September, that is open to the observations I have made on the previous conversation, namely, that it was after the bill was filed, and when the defendants were defending this suit. Independently of this circumstance, this part of the case—this evidence—is open to this observation—that it is an admission supposed to be made by the defendants against their own right and title, and ought therefore to have been stated in the bill filed by the plaintiff, in order that the defendants might have had an opportunity of answering it. It appears to me, therefore, that this part of the case is not entitled to much weight; and taking the evidence on one side, and contrasting it with the evidence on the other, it appears to me that the evidence on the part of the defendants so strongly preponderates, as to lead me to the conclusion that it was the intention of the testator to transfer, not merely the legal title,

but a beneficial interest; and therefore I cannot make the declaration prayed for. Under these circumstances, therefore, as far as relates to this part of the case, I must dismiss the bill.

But there is something further—there is an inquiry prayed for respecting certain furniture; but I do not think, for a few fragments of old furniture, that it will be worth while to incur the expense of sending the matter for inquiry before the Master; the parties had better settle this among themselves; but as to the rest of the bill, I see no reason why it should not be dismissed, with costs.

*Eltham v. Young*, Sittings at Gray's Inn after Trinity Term, 1834.

### Exchequer of Pleas.

#### PLEADING.—VARIANCE.—DEMURRER.

*The Court refused to set aside a declaration, partly in debt and partly in assumpsit, after a suit in debt, but left the defendant to his demurrer.*

In this case an application was made to set aside the declaration, on the ground that it varied from the writ. The summons was in debt, and the declaration commenced in debt, and the rest of it only contained the common counts in assumpsit.

*Vaughan, B.* and *Bolland, B.* were of opinion that the declaration here was not such a nullity as the Court would interfere to set aside on motion. The plaintiff's declaration was a bad one, it being partly in debt and partly in assumpsit. It might, perhaps, be a ground of special demurrer, and the defendant was therefore at liberty to demur if he could, but the Court would not interfere thus summarily to set aside the declaration.

Rule refused.—*Rotton v. Jeffery*, E. T. 1834. Excheq.

#### INFERIOR JURISDICTION.—CERTIORARI.

*The 19 Geo. 3, c. 70, § 4, as to removing judgments of inferior courts, applies to cases where the suit is for more than 20*l.*, and the rule for the certiorari is absolute in the first instance.*

In this case the plaintiff had obtained a judgment for upwards of 20*l.* in an inferior court, and the defendant had removed his goods and person out of the jurisdiction. On application for a certiorari to remove the judgment thus obtained, two questions arose, first, whether the 19 G. 3, c. 70, § 4, extended to cases where the sum recovered by the plaintiff was under 20*l.* applied to a case where the sum recovered was upwards of 20*l.*; and secondly, whether the rule was *nisi*, or absolute in the first instance.

*Cur. ad. vult.*

Lord Lyndhurst afterwards was of opinion, that the enacting part of the statute was more extensive than the preamble, and therefore that the fact of the sum exceeding the amount of 20*l.* was of no importance. According to



the practice the rule was absolute in the first instance.

Rule absolute in the first instance.—*Knowles v. Lynch*, E. T. 1834. Excheq.

**COSTS OF THE DAY.—OFFER TO REFER.**

*The plaintiff is not excused from proceeding to trial, by an offer to refer made after the commission day.*

A rule nisi was obtained in this case for the costs of the day, for not proceeding to trial. On shewing cause against this rule, it was shewn that a proposal to refer had been made, but after the commission day.

The Court thought the proposition too late to free the plaintiff from his liability to proceed to trial, and therefore made the rule absolute.

Rule absolute.—*Eaton v. Shuckburgh*, E. T. 1834. Excheq.

**MALICIOUS ARREST.—COSTS UNDER 43 G. 3, c. 46.**

*It is a matter of doubt whether an actual arrest is necessary to entitle a defendant to avail himself of the provisions of the 43 G. 3, c. 46, § 3.*

In this case the defendant had been held to bail for 60*l*. At the trial the plaintiff obtained a verdict for one shilling only. On a motion to deprive the plaintiff of costs under the 43 G. 3, c. 46, § 3, it did not appear by the affidavits that the defendant had been arrested, but merely that he had been held to bail. A rule nisi was obtained on the affidavits.

On shewing cause against that rule, it was objected, that in order to entitle the defendant to the benefit of the act on which the application was founded, he must have been actually arrested, and not merely held to bail, as it was the arrest which really proved the inconvenience on account of which the defendant was to be entitled to the benefit of this act.

The Court declined giving any opinion on that point, as the rule might be discharged on other grounds.

Rule discharged.—*Wilson v. Broughton*, E. T. 1834. Excheq.

**AMENDMENT.—JOINDER OF PLAINTIFF.—ERROR.**

*If an executor has not joined, and by bringing a new action the Statute of Limitations would bar the claim, the Court will allow the proceedings to be amended.*

*No such amendments will be for the future allowed, except in such cases as the claim would be barred by the Statute of Limitations.*

In this case there were several executors and an executrix appointed by the testator's will. An action was brought on a promissory note in the name of the executors, but not of the executrix. An application was afterwards made to amend the proceedings by introducing

her name, on an affidavit, which stated that she was a mere nominal party, she not having proved the will, and that the Statute of Limitations would be a bar to a fresh action. A rule nisi was granted.

Cause was shewn against this rule.

*Parke*, B.—As to this case, I think the amendment ought to be allowed, as unless we were to do so, the claim of the plaintiffs would be barred by the Statute of Limitations. It has now been agreed among all the Judges, that for the future, since the passing of the Uniformity of Process Act, such an amendment as this will be allowed only in those cases where the claim would be barred by the statute.

*Bolland*, B. and *Alderson*, B., concurred.

Rule absolute on payment of costs.—*Larkin & others v. Watson*, E. T. 1834. Excheq.

**NEW TRIAL.—WRIT OF INQUIRY.—SHERIFF'S NOTES.—DEMURRER.—JUDGMENT.**

*When judgment on demurrer has been signed, and a writ of inquiry executed, on a motion for a new trial, it is sufficient to produce the notes of the under-sheriff, verified by affidavit. A party admits all the contracts in the form stated in the declaration by a judgment by default, or on demurrer.*

In this case the plaintiff, who was landlord of a person become bankrupt, put in a distress for rent on the premises of the latter. The defendant, who was assignee of the bankrupt under the commission, gave a guarantee in these terms: "As assignee of the estate and effects of *R. L.*, a bankrupt, I hereby undertake, in consideration of Mr. Stephens withdrawing the person put into possession of Mr. *L.*'s effects under a distress for 350*l.*, for rent due to Mr. Stephens, that the sum of 350*l.* shall be paid to Mr. Stephens out of the sale of the produce of the same effects." On this guarantee the plaintiff declared. The defendant pleaded specially, that at the time of giving the said guarantee, he was assignee of the effects of *R. L.*, and that he had given it in the character of assignee; that the fiat of bankruptcy under which he was appointed had since been superseded; that he was no longer in possession, and was not bound by his agreement. To this the plaintiff demurred, and after judgment in his favour, had a verdict for 1*s.* on the execution of a writ of inquiry before the sheriff. A motion was afterwards made for a new trial, and the sheriff's notes were then produced, verified by affidavit. The rule was drawn up on reading that affidavit, and not on reading the sheriff's notes. On shewing cause against this rule, it was contended, that it ought to have been drawn up on reading the notes.

*Parke*, B.—That is sufficient. It was done to save expense. If that course had not been adopted, the opposite party must have taken office copies of the notes.

It was then urged that it could have been shewn that the debt for which the action was brought was secured by a mortgage, and that

there were prior executions against the bank-  
rupt to an amount sufficient to exhaust the  
whole of the property on the premises.

*Parke, B.*—These facts would have been a  
good answer under the general issue, but would  
not be evidence on the execution of this writ  
of inquiry. The defendant engaged to pay the  
rent due, the amount of which is stated in the  
guarantee, and the plaintiff is entitled to that  
amount. The present rule therefore for a new  
inquiry must be granted.

Rule absolute.—*Stephens v. Tell*, E. T. 1834.  
Excheq.

### King's Bench Practice Court.

#### FILING AFFIDAVITS.

*Affidavits made in support of applications to the  
Court, must in all cases be filed, whether  
the application is successful or not.*

This was an application to the Court, to  
compel Mr. Pitt, the gentleman so often before  
the Court, to file certain affidavits which he had  
made and which had been used in support  
of a motion, and in which several scandalous  
statements were set forth, without respect to  
the gentlemen on whose behalf the motion was  
made. The application, though made had not  
been granted; by applying to the Court, the  
applicant had submitted to its jurisdiction, and  
therefore he was bound to observe the rules of  
the Court, one of which was, that all affidavits  
made in Court should be filed.

*Patteson, J.*, granted a rule nisi.

Rule nisi granted.—*Ex parte Elderton v.  
Lucena*. T. T. 1834. K. B. P. C.

#### PROHIBITION.—ECCLESIASTICAL COURT.— ATTORNEY'S LIEN.

*Before the Court will interfere with the pro-  
ceedings of the Ecclesiastical Court by pro-  
hibition, the defendant must appear.*

Motion for a rule to shew cause why a writ  
of prohibition should not issue to the Ecclesi-  
astical Court, requiring it to cease from enter-  
taining a certain suit proceeding in it for the  
establishment of a will, on the ground that a  
question of law would arise in the course of  
the inquiry. Mr. Law, who was an attorney,  
had prepared the will, which had not been paid  
for. Other money was due to him out of the  
testator's estate. He had, consequently, a lien  
on the will, which was in his possession. The  
Ecclesiastical Court would take no notice of  
that claim, but would at once proceed by cita-  
tion, and compel him to deliver it up. He  
would then be deprived of the right which at  
law he possessed. Mr. Law had not at present  
appeared.

*Patteson, J.*, observed, that he did not  
know at present that the Court would not allow  
his claim of lien, as he had not appeared. It  
was his business to appear, and then, if the  
Ecclesiastical Court will not take notice of his

claim, the Court may interfere. His applica-  
tion at present is too early.

Rule refused.—*Ex parte Law*, T. T. 1834.  
K. B. P. C.

#### CERTIORARI.—PROSECUTOR'S RIGHT.—DE- FENDANT'S EXPENCES OF DEFENCE.

*The prosecutor has a right to remove his in-  
dictment at any time before trial, and  
therefore the defendant is not entitled to  
any expenses consequent on the exercise of  
that right.*

Motion for a rule to shew cause why the  
prosecutor Whalley should not pay the costs of  
the defendants' preparation for their trial at  
the Middlesex sessions, under these circum-  
stances. The defendants were indicted for  
conspiring to strike Whalley, who was an at-  
torney, off the roll. The bill was found at the  
Middlesex sessions, and regular notice of trial  
given by the defendant. A certiorari was pro-  
duced by the prosecutor before the case was  
called on, for the removal of the indictment.  
Very great and useless expense had been in-  
curred by the defendant's witnesses in pre-  
paring for trial at the Middlesex sessions, as  
most of them had been brought from the  
country. The prosecutor rendered this ex-  
pense useless, by his vexatious proceedings,  
and therefore he ought to be compelled to re-  
imburse the defendant.

A rule nisi was accordingly granted.

On shewing cause against this rule, it was  
contended that the prosecutor had a right to  
remove his indictment by certiorari at any time  
before trial. If, in consequence of the exer-  
cise of that right, the defendants had been put  
to any expenses, the Court had no authority to  
compel the prosecutor to reimburse them.

In support of the rule, it was urged that the  
defendants had experienced great hardship by  
the harassing proceedings of the prosecutor.

*Per Curiam.* It appears to us, that as the  
certiorari issued legally and regularly, the  
Court cannot interfere to make the prosecutor  
pay any costs on the issue of it. The present  
rule must therefore be discharged, with costs.

Rule discharged with costs.—*Rex v. Pasman  
and others*, T. T. 1834. K. B. P. C.

#### EJECTMENT.—SERVICE OF DECLARATION.

*A mistake in the Christian name of the ten-  
ant in possession is immaterial.*

This was a motion for judgment against the  
casual ejector. The service, it appeared, was  
perfectly regular on the tenant in possession  
on the premises; but in the tenant's notice  
the name of "Jacob" was substituted for  
"Sarah."

*Patteson, J.*, thought that sufficient, there-  
fore granted the rule.

Rule granted.—*Doe d. Folkes v. Roe*, T. T.  
1834. K. B. P. C.

## SHERIFF.—RETURN OF WRIT.—PAYMENT INTO COURT.

*Both plaintiff and defendant have a right to rule the sheriff to return the writ.*

This was a motion for a rule to shew cause why the sheriff should not return the writ executed by him in this case, or why he should not pay the money deposited in his hands, in lieu of bail, into Court. The facts of the case appeared to be these; that the defendant, on being arrested, deposited in the hands of the sheriff the amount of the debt claimed by the plaintiff, and 10*l.* for costs, pursuant to the 43 Geo. 3. The sheriff made no return of the writ, nor did he pay the money into Court. The defendant wished to have the money paid into Court to abide the event of an action, and to pay in 10*l.* more for costs, pursuant to the 7 & 8 Geo. 4, c. 71. This, however, he could not do unless the money was paid into Court. The plaintiff had not ruled the sheriff to return the writ, and there was every reason to suppose he would not. No means, therefore, existed of compelling him to pay the money into Court, unless the defendant were permitted to rule him.

*Patteson, J.* saw no reason why the defendant should not be at liberty to rule the sheriff to return the writ, as well as the plaintiff. He therefore granted a rule, requiring the sheriff to return the writ or bring the money into Court.

*France v. Clarkson, T. T. 1834. K. B. P. C.*

## JUDGMENT AS IN CASE OF A NONSUIT.—PROCEEDINGS BEFORE THE SHERIFF.

*In case of an issue being directed to be tried before the sheriff, under the 3 & 4 W. 4, c. 42, s. 17, the defendant may obtain judgment as in case of a nonsuit, if the plaintiff does not proceed in due time after issue joined.*

A rule *nisi* was obtained in this case for judgment as in case of a nonsuit. It was an issue directed by a Judge's order, under 3 & 4 W. 4, c. 42, s. 17, to be tried before the sheriff. The plaintiff had, after issue joined, neglected during two terms to proceed according to the course and practice of the Court.

On shewing cause against this rule, it was contended that a proceeding before the sheriff could not be considered as a proceeding according to the course and practice of the Court. The words of the statute, 14 G. 2, c. 17, "course and practice of the Court," must be taken to mean the course and practice of the Superior Court.

*Cur. adv. vult.*

*Patteson, J.* referred to the other Judges on this subject, and they were opinion with himself, that all proceedings preparatory to the trial of the issue before the sheriff, must be considered as "the course of practice of this Court." They had consequently all the incidents connected with them. The defendant, therefore, was entitled to judgment as in case of a nonsuit, from the circumstance of the

plaintiff not having proceeded within the <sup>at two</sup> terms of the issue joined.

Rule discharged, on a peremptory undertaking, the plaintiff to pay the costs of the day.  
*Horwood v. Roberts, T. T. 1834. K. B. P. C.*

## BUILDING NEW HOUSES OF PARLIAMENT AND LAW COURTS.

We learn from authority on which we can rely, that orders have been given by the Government to repair and fit up the late House of Lords and the Painted Chamber, for the use of the two Houses of Parliament; but that the reported expense of 30,000*l.* is grossly over-stated. We understand the amount will be comparatively moderate.

We cannot, however, comprehend the reason of pursuing this course, unless it be that the use of St. James's Palace has been positively refused, and that a few thousand pounds must be unavoidably sacrificed to procure temporary places of meeting for the ensuing session, during which the determination of the two Houses may be taken on the question of the site as well as the plan of the new building. If the site be a matter of doubt, and the expense within moderate bounds, the course intended to be pursued is not so objectionable as it at first appeared, for wherever the Parliament may sit there will be some considerable outlay in adapting rooms to suit the multifarious business of legislation. The Government, indeed, is right is not hastily determining either *where* or *how* the palace of the legislature shall permanently be built.

In the mean time—and here we enter on our own peculiar province relating to the profession—it seems absolutely necessary that the Court Rooms at Westminster, with their offices and chambers, should be vacated before the meeting of Parliament, for the use of committees and the officers of the several Houses. If this be not done, the cost of preparing the rooms which are indispensable for the dispatch of business, will, with the other expenses, much exceed 30,000*l.* We therefore again urge the profession to bestir themselves in the proper quarters, to bring about a removal of the Courts from Westminster to the Inns of Court. For the present, the halls of those ancient societies will answer every purpose, and ultimately, if the nation will not erect a suitable College of Justice for the administration of its laws, we recommend the Inns of Court to appropriate part of their

large revenues towards that important object.

The members of Parliament, who chiefly reside westward, may find it convenient to hold their sittings at Westminster Hall or St. James's Palace; but we are quite sure that the neighbourhood of Chancery-lane, as the centre of this vast metropolis, is the spot precisely adapted for the Courts of Justice. The congregation of the great body of lawyers in that quarter is a sufficient proof of its convenience. The Rolls Estate, including the garden, occupies two acres of ground, and as the Master of the Rolls no longer resides in the mansion, and has now a fixed salary, the whole of this site might be available for Courts and Offices.

The present is the only opportunity which the profession is likely to possess, at once of accommodating themselves and benefiting the public; and we trust they will not allow it to escape. We are well assured that the Bar in general is desirous of the change, and that several of the Judges are also favourable to it. Our only fear is, that whilst all branches of the profession concur in its propriety, no sufficiently active measures will be taken to bring the matter to the notice of Government. This, of course, should be done without any delay, in order that no preconceived plan may be even partially approved, and thus prejudice the future adoption of that which seems to combine in its favour so many advantages.

## SITTINGS OF THE MASTER OF THE ROLLS.

*Michaelmas Term, 1834.*

*At Westminster.*

Monday	Nov. 3	Motions.
Tuesday	4	Petitions in the General Paper.
Wednesday	5	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday	6	Consent Causes and Petitions, and Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	7	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	8	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	10	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	11	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday	12	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday	13	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	14	Pleas, Demurrers, Causes, Further Directions, and Exceptions.

Saturday	15	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	17	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	18	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday	19	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday	20	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday	21	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	24	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday	25	Pleas, Demurrers, Causes, Further Directions, and Exceptions.

AFTER TERM,

*At the Rolls Court, Chancery Lane.*

Wednesday	26	Petitions after Swearing in the Solicitors.
Thursday	27	Short Causes.

His Honor will sit at Ten o'Clock.

The Entrance to the Rolls Court at Westminster, faces St. Margaret's Church.

## EXCHEQUER.—SITTINGS IN EQUITY.

*MICHAELMAS TERM, 1834.*

Saturday, Nov. 8th.	Petitions under Acts of Parliament; Tithe Causes. — Mr. Baron Alderson.
Friday, 11th.	Petitions; Motions; Paper of General Business. — Lord Lyndhurst.
Saturday, 15th.	Business standing over from the 14th; Causes (except Tithe Causes). — Lord Lyndhurst.
Tuesday, 18th.	Petitions; Motions; Paper of General Business. — Lord Lyndhurst.
Thursday, 20th.	Business standing over from the 18th; Causes (except Tithe Causes). — Lord Lyndhurst.
Saturday, 22d.	Petitions under Acts of Parliament; Tithe Causes. — Mr. Baron Alderson.
Monday, 24th.	Motions, and Paper of General Business. — Lord Lyndhurst.

## ROLLS COURT.—NOTICE TO SOLICITORS.

SOLICITORS are requested to deliver to the Secretary, two days before the hearing, copies of the following papers:

On the hearing of—

*Causes*, the Title and Prayer of the Bill.  
*Further Directions*, the Decree and Report.  
*Exceptions*, the Report and Exceptions.  
*Demurrer*, the Bill and Demurrer.  
*Plea*, the Bill and Plea.  
*Petition*, the Petition.  
*Causes on Wills*, the Will.

## ANSWERS TO QUERIES.

## Common Law.

MEDICAL CHARGES. VOL. 8, P. 399.

In answer to the query of O. N., I would observe that by the 55 Geo. 3, c. 194, s. 21, explained and amended by 6 Geo. 4, c. 133, no apothecary can recover any charges claimed by him in any Court of Law, unless he proves on the trial that he was in practice as an apothecary prior to, or on the 1st August, 1815, or that he has obtained his certificate to practise from the Apothecaries' Company. *A. B.*, therefore, not having obtained such certificate, nor having been in practice at the time stated, cannot recover either for his attendance or the nostrum applied. If, however, the case is clearly one of a surgical nature, which does not appear from the query, we must then look to 3 Hen. 8, 3. 11, s. 1, whereby it is enacted that no one shall act as a surgeon within the city of London, or seven miles round, unless he shall be examined and licensed by the College of Surgeons, under a penalty of 5*l.* per month; and from this it is manifest that *A. B.*, by practising, is liable to the penalty; but inasmuch as the statute contains no prohibitory clause, I am of opinion that *A. B.*, though subject to the penalty, might recover for his labour, and it would be incumbent upon a defendant, if he intended to avail himself of the plaintiff being unlicensed, to prove that fact; vide *Grenaire v. Le Clerc Bois Valon*, 2 Camp. 143. If the promise were reduced to writing, I apprehend it would not materially alter the case: it would, it is true, facilitate the proof of *A. B.*'s services, but he would still remain liable to the penalty; or if the case were within the department of an apothecary, then I submit that the consideration for the promise being manifestly illegal, it would be insufficient to support an action.

GENUS.

## QUERIES.

## Common Law.

INFANT—ARREST.

Can an infant be held to bail for necessities, where the debt amounts to 20*l.* or above? or would the Court discharge him on entering an appearance? E. S. H.

## Law of Property and Conveyancing.

VALIDITY OF DEEDS.

*A.*, by indentures of lease and release, purports to convey freehold property to *B.*, and covenants for the title. It afterwards turns out that *A.* has no such property as that included in the deeds. Can *B.* maintain an action, or has he his remedy in equity against *A.*, upon the covenant for quiet enjoyment? Or is there a distinction where a deed is void by reason of something which is apparent on the face of it, (in which case *B.* could not have any relief,) and where it purports to convey property which the conveying party has not? S. W.

## THE EDITOR'S LETTER BOX.

LEGAL ALMANACK.

We have for a long time had under consideration the plan of a *Legal Almanack*; and, at the suggestion of several Subscribers, as well as from a conviction of its utility, have now determined to publish it immediately. A considerable part of the work is already printed. It will comprise—1. A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices; the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c. 2. The hours of attendance at the Common Law and Equity Offices, carefully ascertained. 3. The Terms and Returns of Writs. 4. The Judges and Officers of all the Courts, including the recent changes and appointments. 5. Barristers, with the date of their Call, and regulations of the Inns of the Court. 6. Perpetual Commissioners under the Fine and Recovery Act. 7. Members of the Incorporated Law Society. 8. The Circuits. 9. The Quarter Sessions; and various other Lists and Tables of professional utility.

In order to carry the information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers down to the latest time, the work will be published in two parts. The first will probably be ready on Saturday next, and we shall be glad to receive any suggestions from our subscribers in time for the second part.

We shall probably, in our next number, give an outline of the Introductory Lecture, delivered by Mr. Wilde at the Incorporated Law Society, the subject of which was the Study of the Law.

We thank a Correspondent in Somersetshire for a list of the Perpetual Commissioners for that county, and will insert it.

The Letter of T. B., on the Practice at the Judges' Chambers, shall be considered.

The Queries and Answers of P. i.; E.; I. M. C.; B. A. Z.; Juvenis; M. J. N.; R. E. S.; "Spes;" and M., have been received.

Our Correspondents will please to pay the postage of their Letters. We are obliged to adopt a general rule of disallowing the publisher's charges in this respect.

A "Solicitor" is informed that his Letter has been sent to the proper party, and we are much obliged for his communication.

In the case of *Freen v. Chaplin*, which appeared in our last number but one, it is said by our Correspondent J. B., that it does not sufficiently appear on what ground the defendant was entitled to an imparlance. It was surely not necessary to state what must be within the knowledge of every practitioner, namely, that according to the old practice, if a plaintiff declared in vacation, the defendant was entitled to an imparlance till the next term.

# The Legal Observer.

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Vol. IX. SATURDAY, NOVEMBER 15, 1834. No. CCXXXVII.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE EVENTS OF THE TERM.

SEVERAL events have happened in this Term, which require some notice from us. We take them in their order of date.

The library belonging to the Chancery Bar was much injured during the late fire at Westminster, although untouched by the fire. It was formed chiefly by the private subscriptions of that bar, but was greatly assisted by Lord Eldon. It contained a good collection of reports and text-books. On a representation being made to the Lord Chancellor on the subject, on the first day of Term, he acknowledged that a library was a necessary appendage to the Court, and mentioned that he would take an opportunity of applying to the Chancellor of the Exchequer on the subject, but seemed to express some doubts of the success of his application. The whole loss is estimated only at one hundred and fifty pounds; and we may suggest, and we do it in good feeling, that this would be no bad opportunity for the Noble Lord to shew his good will to the profession by supplying the deficiency.

Mr. Rolfe has been appointed Solicitor-General; and we should not faithfully represent the opinion of our own profession if we did not say that the appointment has been viewed with some surprise. The learned gentleman has long enjoyed the friendship of the most active member of the present Cabinet, and we presume it is to this that he has chiefly owed his elevation; and far be it from us to say that he will not henceforth prove that he deserves it. Many instances may be adduced—Lord

Hardwicke and Sir William Grant, are the names which occur to us the most readily—of persons comparatively undistinguished before their promotion to this very office of Solicitor-General, who have afterwards acquired the greatest reputation. One other reason for the appointment was doubtless the political opinions known to be entertained by most of the present leading men at the Equity Bar. It is greatly to the honour of these gentlemen, that in a time when there is no want of political subserviency, the present Government could not obtain the services of the five most eminent equity leaders. They being excepted, it is probable, if an equity Solicitor-General was considered necessary by the Government, that it could not have chosen better than it has done. It is a mistake, however, to suppose that the two chief law officers of the Crown must be selected from different bars. Many familiar instances may be adduced of the contrary. Thus, Sir John Scott, Attorney-General, and Sir John Mitford, Solicitor-General, both belonged to the Equity Bar. Sir William Garrow, Attorney-General, and Sir Samuel Shepherd, Solicitor-General, both belonged to the Common Law Bar, and many other instances might be cited. Besides the Attorney and Solicitor-General, the present Government will be further assisted by the services of the present Master of the Rolls, who, retaining his seat in the House of Commons, will probably speak on all matters within his province. His able address on moving for a committee on the libel laws, we noticed at the time that it was made,\* and this important subject will, we hope,

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\* See 7 L. O. 434.

still continue to receive his consideration, both in the preparation of the bill, and its conduct through Parliament. Some exertion has already been made on the subject of the removal of the Courts of Law and Equity from Westminster. The profession is universally friendly to it; we have not heard a dissenting voice, and we would venture to point out to the Lord Chancellor that he has here another opportunity of making himself popular, by furthering the general wish in this respect. Some further allusion to the subject will be found in another part of this number.

The peculiar state of the Equity Bar, which we have already hinted at, would seem to call for a further creation of King's Counsel, and several names have been mentioned. The only appointment actually made at the time this is written is, however, quite uninfluenced by this feeling. Mr. Preston has long merited distinction, and we record with pleasure that the body of Conveyancing Counsel are much indebted to the present Chancellor for conferring this honour on two of their body, Mr. Charles Butler and Mr. Preston. We know that it has been frequently contemplated to confer rank on some of the members of this class of the profession. Mr. Serjeant Scriven was appointed, we believe, in accordance with this feeling, and we know that Lord Lyndhurst intended to have taken some further steps in the matter, had he continued in office. A distribution of a fair portion of the honours of the profession, is not only due to the body of Conveyancing Counsel, from their learning, respectability, and numbers, but would be attended with benefit to the public, in still further raising this class of professional men. We beg to repeat our satisfaction at this promotion, which, while it does but justice to the learned individual on whom it is conferred, also reflects credit on the whole class to which he more peculiarly belongs.

## THE LAW OF CONTRACTS.

### WHAT AGREEMENTS MUST BE IN WRITING.

In the present article we proceed to shew what other agreements, besides those mentioned in a former article,<sup>a</sup> are required to be in writing. The next species mentioned in the Statute of Frauds are contracts or sales of lands, tenements, or hereditaments, or any interest in or concerning

them.<sup>b</sup> The enactment itself is plain, but whether an interest is an interest in lands, or in goods and chattels, is often a nice question, and hence much difficulty arises as to its practical application. *A.* goes over the lands of *B.*, and purchases of him successively grass, hops, turnips, potatoes, and trees there growing. Is it a purchase of an interest in lands,<sup>c</sup> or in goods and chattels? It may be either; and we will endeavour to shew what circumstances chiefly determine this question.

By the latest cases it seems to be settled, that where there is to be no delivery till the crop,—whatever it may be,—is cut or gathered, it is a sale, not of an interest in land, but of goods and chattels. In *Smith v. Surman*,<sup>d</sup> the plaintiff, the proprietor of a coppice, had ordered some ash-trees to be felled, and whilst this was being done, the defendant came and purchased them, but afterwards refused to take them: the Court held it a contract, not for an interest in land, but for the produce of the trees when severed from the freehold, and converted into goods and chattels. It is a strong circumstance in this case, that it was a sale of "timber" by the foot, and that the trees were to be felled by the owner; but Mr. Justice *Littledale* thought it would have made no difference had the bargain been that they should be felled by the purchaser. "If in this case," said the learned Judge, "the contract had been for the sale of the trees, with a specific liberty to enter the land to cut them, I think it would not have given him an interest in land within the meaning of the statute. The object of a party who sells timber is, not to give the vendor any interest in his land, but to pass him an interest in the trees when they become goods and chattels." And *Parke, J.*, said, "The defendant could take no interest in the land by this contract, because he could not acquire any property in the trees till they were felled." In *Evans v. Roberts*,<sup>e</sup> the contract was, "for a cover of

<sup>b</sup> See the stat. 8 L. O. p. 481, n. (b)

<sup>c</sup> The practical importance of this distinction will be better understood when we treat of contracts relating to goods and merchandize, which are also required to be in writing: we may, however, observe, that it mainly depends on this,—that a contract relating to an interest in lands cannot be enforced under any circumstances, unless it is in writing; whereas there are special circumstances under which contracts relating to goods may be enforced, though they have not been put into writing.

<sup>d</sup> 9 B. & C. 561.

<sup>e</sup> 5 B. & C. 829.

<sup>a</sup> 8 L. O. p. 481.

potatoes," which were to be turned up by the plaintiff, the seller: the Court held this also not a sale of any interest in lands. "The effect of the contract" (*per Bayley J.*) "was to give the buyer a right to all the potatoes which a given quantity of land should produce, but not to give him any right to the possession of the land; he was merely to have the potatoes delivered to him when their growth was complete." In *Parker v. Staniland*<sup>1</sup> the contract was for the purchase of a *close* of potatoes—about two acres—at so much per *sack*, and not the seller as in the last case, but the defendant, the buyer, was to take them out of the ground,—and that immediately: the Court thought it not a sale of an interest in land. "The land here was considered as a mere warehouse (*per Bayley J.*) for the potatoes till the defendant could remove them, which he was to do immediately." In *Warwick v. Bruce*,<sup>2</sup> a contract for three *acres* of potatoes at so much per *acre*—not as in the last case, at so much per *sack*—to be dug up by the plaintiff, the purchaser, was construed in the same manner. If (*per Lord Ellenborough*) this had been a contract conferring an exclusive right to the land, for the purpose of making a profit of the *growing surface*, it would be a contract for the sale of an interest in or concerning

lands. But here is a contract for the sale of potatoes at so much per acre; the potatoes are the subject-matter of the sale; and whether at the time of sale they were covered with earth in the field, or in a box, still it was a sale of a mere chattel.<sup>b</sup> It falls, therefore, within the case of *Parker v. Staniland*.<sup>1</sup> In *Watts v. Friend*,<sup>1</sup> the contract was that the plaintiff should furnish the defendant—and he did so—with turnip-seed, to be sown on the defendant's land, and that the defendant should sell the plaintiff the whole of the seed raised therefrom, at so much a bushel. Lord Tenterden said, "According to good common sense, this must be considered as substantially a contract for goods and chattels, for the thing agreed to be delivered would, at the time of delivery, be a personal chattel. In *Donellan v. Read*,<sup>2</sup> improvements made by the landlord in premises already demised, and for which the tenant was to pay 5*l.* a year in addition to his former rent, were held not to constitute an interest in land, because the interest of the tenant was created by the previous demise, and continued the same under that demise after the improvements.

We now come to the consideration of the cases in which the Court held an interest in land to be the subject-matter of the contracts in question. In *Crosby v. Wadsworth*,<sup>1</sup> the plaintiff, on the 6th of June, purchased verbally of the defendant a crop of "mowing grass," growing on a close belonging to the defendant; no time was fixed for its being cut, but it was to be cut and made into hay by the plaintiff, the buyer. On the 2d of July the defendant told the plaintiff he should not have it, and afterwards prevented him from taking it. The plaintiff therefore brought an action, and in one count declared for trespass to the land, and in another for the *separavit* of the grass and hay *quod* goods and chattels. The Court held, that under the agreement stated, the plaintiff would be entitled "to the exclusive enjoyment of the crop growing on the land during the proper period of its full growth, and that until it was cut and carried away he might maintain trespass against any person doing the acts complained of:" that consequently the contract was for an in-

\* In the course of a very long judgment, Mr. Justice Bayley said that the opinion delivered by Chief Justice Mansfield, in *Emmerson v. Heelis*, 2 Taunt. 38, was at variance with the above judgment: "But," said the learned Judge, "it was not necessary in that case for the Court to decide the question upon the fourth section of the Statute of Frauds, for the contract, being signed by the auctioneer, as the agent of the buyer, was equally binding whether it was for a sale of goods and chattels or of an interest in land." And secondly,— "The ground of the Lord Chief Justice's opinion as to the contract giving the purchaser an interest in the land, was that the case could not be distinguished from that of *Waddington v. Bristol*, 2 Bos. & Pul. 452: "an opinion shewn by the learned Judge to be scarcely tenable. Thus impugned, the case of *Emmerson v. Heelis*, cannot, we think, be considered any longer as an extant authority. The case was this; the plaintiff put up to public auction, in several lots, a crop of turnips then growing on the land. The defendant, by his agent, attended at the sale, and being the highest bidder for twenty-seven lots, was declared to be the purchaser, and the name of the defendant was written in the sale bill opposite to each particular lot for which he had been declared the highest bidder.

<sup>1</sup> 11 East, 362.

<sup>2</sup> 2 M. & S. 205.

<sup>b</sup> Growing potatoes are emblements, and go not to the heir, but to the executor.

<sup>1</sup> See *supra*.

<sup>2</sup> 10 B. & C. 446.

<sup>3</sup> 3 B. & Ad. 899.

<sup>4</sup> 6 East, 602.



terest in land, and ought to have been in writing. Mr. Justice Bayley, in *Evans v. Roberts*,<sup>m</sup> made the following remarks, in support of this decision:—"In *Crosby v. Wadsworth*, the buyer did acquire an interest in the land; for, by the terms of the contract, he was to mow the grass, and must therefore have had the possession of the land<sup>n</sup> for that purpose. Besides, in that case the contract was for the growing grass, which is the natural and permanent produce of the land, renewed from time to time without cultivation. Now, growing grass does not come within the description of goods and chattels, and cannot be seized as such under a *fi. fa.*; it goes to the heir, and not to the executor; but growing potatoes come within the description of emblements, and are deemed chattels, by reason of their being raised by labour and manurage; they go to the executor of the tenant in fee simple, although they are fixed to the freehold, and they may be taken in execution under a *fi. fa.* as goods and chattels."

In the case of *Scoral v. Borall*,<sup>o</sup> which was also an action of trespass, for cutting and carrying away underwood, which the plaintiff had purchased verbally of the defendant, and which he was to cut down, but when, or in what stage of its growth, was not stipulated, the Court held the sale a sale of an interest in land, drawing the distinction above described by Mr. Justice Bayley, between things raised by industry and things which give no annual profit, which, as part of the inheritance, go to the heir, not to the executor.

In the *Earl of Falmouth v. Thomas*,<sup>p</sup> the defendant took a farm of the plaintiff, upon which there were some crops of corn and turnips, and upon it also certain work had been done and certain materials expended; and the defendant agreed verbally to pay the plaintiff for these crops, and for the labor and materials, according to a valuation. The Court of Exchequer held this an agreement for an interest in land, and that it ought to have been in writing. The declaration contained a count for the crops, and a count for the work and labour. *Per Lord Lyndhurst*.—"The question is, whether these counts are founded upon a contract for an interest in land. At the time

when each of these contracts upon which the plaintiff sues, is stated to have been made, the crops were growing upon the land, the defendant was to have had the land<sup>q</sup> as well as the crops; and the work, labour, and materials were so incorporated with the land as to be inseparable from it. The defendant would not have the benefit of the work, labour, and materials, unless he had the land; and we are of opinion that the right to the crops, and the benefit of the work, labour, and materials, were both of them an interest in the land." The case of *Mayfield v. Wadsley*, was similar as to growing crops; and this decision may be considered as proceeding on the following grounds, stated in that case by Mr. Justice Littledale: "I think that, in effect, this was a contract relating to the sale of an interest in land. If the giving up of the land was any part of the consideration for the defendant agreeing to take the wheat, which was then sown in the land, the wheat must be considered as part of the land itself. It is true, that in some cases *there may be a contract for the growing crops, independently of the land itself*; but where the land is agreed to be sold, and the vendor takes from the vendee the growing crops, the latter are considered part of the land. Most of the cases where this question has arisen, were upon contracts for growing wheat, potatoes, and things of that nature, *distinct* from any letting of the land: here, on the contrary, the agreement did not relate to the mere sale of the produce of the land."

We hope we have succeeded, in the above remarks, in shewing what is, and what is not, an interest in lands, within the meaning of the statute; and in conclusion we will briefly notice, and endeavour critically to appreciate, the cases which tend to embarrass this question. One is the case of *Emmerson v. Heelis*,<sup>r</sup> as to which, the judgment of the Court of Common Pleas was different from that of the Court of King's Bench, subsequently, upon *Evans v. Roberts*, which was not distinguishable from it. We refer our readers to our note on the former case; and will remark no further upon it, than that we consider it a case

<sup>q</sup> The defendant had had the crops, and the benefit of the materials and work and labour, and therefore was liable to pay for them, not according to the contract, for that was not in writing; but according to their value, which might have been recovered in this action, had there been a *quantum meruit* count in the declaration.

<sup>r</sup> 2 Taunt. 38.

<sup>m</sup> *Suprà*.

<sup>n</sup> And the plaintiff himself assumed this to be the true meaning and effect of the contract, by declaring in trespass, *quare clausum fregit*.

<sup>o</sup> 1 Yo. & Jer. 396.

<sup>p</sup> 1 Crompt. & Mee. 89.

no longer of any authority. Another case tending to embarrass, is that of *Waddington v. Bristow*;<sup>2</sup> for though Mr. Justice Bayley distinguished it from *Emmerson v. Heelis*—on the authority of which it was decided—and thereby seemingly preserved it, whilst he impugned the authority of the latter; yet really, both from the remarks of the learned Judge himself, and from a comparison with subsequent decisions, that case seems to us to retain little or no force as an authority. The case was an agreement<sup>3</sup> between the plaintiffs, to buy, and *A. B.*, whom the defendants represented, to sell, all the hops then growing on twenty-two acres of land, at so much per hundred weight, to be picked and delivered by the seller. The written agreement to this effect was put in; but it was not stamped, nor did it, according to the then Stamp Act, require a stamp, if it was an agreement for the sale of goods, wares, and merchandize; and that was the question. *Heath, J.* thought that the subject matter of the agreement must be taken with reference to the time when the contract was made—a rule, it may be observed, the reverse of that adopted by Lord *Tenterden* and the Court of King's Bench, in the recent case of *Watts v. Friend*; and as the hops were not then *in esse*, he and Mr. Justice *Rooke* thought it not a sale of goods; while the Lord Chief Justice (*Alvanley*) thought it a sale of goods, and something more; and Mr. Justice *Chambre* thought that the vendee had under it an interest in the produce of the vendor's land—evidently meaning an interest in the land; though an interest in the produce of land—the expression used—may be an interest, not in the land, but merely in goods and chattels. Our readers will therefore perceive that there are several infirmities in this case: first, the Judges by whom it was decided were of different opinions. Secondly, the opinions of two of them were expressed with such vagueness, uncertainty, and imprecision, that it cannot safely be predicated what were their opinions. Thirdly, taking

<sup>2</sup> 2 Bos. & Pul. 452.

<sup>3</sup> The agreement was as follows: "Agreed this 13th of November, 1799, to give the undermentioned gentlemen at the rate of 10l. per hundred weight for the quantities of hops as attached to their respective names, to be in pockets, and delivered at Whitstable.

William Francis, all his growth, about 23 acres.

Henry Simmons, do. 22."

(Here followed several names, with their respective quantities.)

(Signed by the purchaser.)

the state of the subject matter at the time of the making of the contract as the criterion of its being a sale of goods or not—as was done by the two other Judges—is not the rule of common sense, according to Lord *Tenterden*, nor of law, according to the latest decisions. And fourthly, though Mr. Justice Bayley had considered it most elaborately, he carefully forbore to countenance the opinion of its being a sale of an interest in land—the effect to which the case is commonly quoted<sup>4</sup>—though he agreed it was not a sale of goods and chattels, supposing that expression to apply only to things *in esse*. The last case of this kind which we shall notice is *Mayfield v. Wadley*,<sup>5</sup> which also has the infirmity of not having been viewed from one common point, and of having been decided on different grounds, by the different Judges. It was a sale of growing crops to a purchaser, who, as in the case of the *Earl of Falmouth v. Thomas*, at the same time took possession of the land under the seller: the contract as to the crops was distinct from that as to the transfer of the land; and some dead stock also was purchased at the same time by the defendant. *Abbott, C. J.* thought, that inasmuch as the defendant had had the crops, the plaintiff would be entitled to recover—if not according to the contract, nor in that action—at least in another declaration upon a count "stating that the defendant was indebted for the value of crops sown by the plaintiff on land in his possession, and which the defendant was allowed to take, and for which he promised to pay:" from which the inference is plain, that the Chief Justice thought the growing crops in that case—as did also Mr. Justice *Littledale*<sup>6</sup>—an interest in land, and that the agreement ought to have been in writing; though at the same time he thought the Court ought not to reduce the damages, because the final result would be the same, with only the additional expense of a second action. The opinion of *Bayley* and *Holroyd, JJ.* differed; but what is material for our purpose is to remark, that the opinion of the two other Judges as to the point above stated, have been substantially adopted, without, however, a formal recognition of it by the Court of Exchequer, in a recent case already mentioned.<sup>7</sup>

Having now stated what is, and what is not, an interest in land, and removed the

<sup>4</sup> Chitty on Contracts, 241.

<sup>5</sup> 3 B. & C. 357.

<sup>6</sup> See *supra*.

<sup>7</sup> *Earl of Falmouth v. Thomas, supra*.

difficulty arising from the want of a critical appreciation of the few cases which seem to unsettle the question, we have only further to remark upon this head, that every contract for the sale<sup>7</sup> of lands, or any interest in lands, must be in writing, except only sales under the decree of a Court of Equity, which have been constructively excepted from the statutory provision, on the presumption, that not sales of a judicial kind, but only sales between party and party were intended by that expression in the statute. And here we must beg of our readers the indulgence of a rest till some future number, when we will shew the remaining agreements required to be in writing.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

No. IX.

### THE ACT FOR ABOLISHING CAPITAL PUNISHMENT FOR RETURNING FROM TRANSPORTATION. 4 & 5 W. 4, c. 67.

THE following is the remaining act of the last Session of Parliament, having for its object the amelioration of the Criminal Code. It recites that by the 5 G. 4, c. 84, § 22, it is enacted, that if any offender who should have been ordered to be transported, or who should have agreed to transport himself, either for life or any number of years, should be afterwards at large within any part of his Majesty's dominions, without some lawful cause, before the expiration of the term for which such offender should have been ordered to be transported, or should have so agreed to transport himself, every such offender so being at large, being thereof lawfully convicted, should suffer death as in cases of felony without benefit of clergy: and it enacts, that so much of the recited act as inflicts the punishment of death upon persons convicted of any offence thereinbefore specified shall be repealed; and that every person convicted of any offence above specified in the said act, or of aiding or abetting the commission thereof, shall be liable to be transported beyond the seas for his or her natural life, and previously to transportation shall be imprisoned, with or without hard labour, in any common gaol, house of correction, prison, or penitentiary, for any term not exceeding four years.

<sup>7</sup> Sales by auction. *Kenworthy v. Schofield*, 4 D. & R. 559; 2 B. & C. 947. *Blaydon v. Bradbear*, 12 Ves. 466.

## PRACTICE AS TO ATTACHMENTS.

Some confusion has been caused in the practice, with respect to obtaining attachments by certain decisions concerning the species of service which is necessary to obtain them. According to the old practice, in order to bring a party into contempt it was necessary that the rule should be personally served, and the original at the same time shewn to him.

In two cases (*Anon.* 1 Chit. Rep. 503, *in re—gent.*, 1 D. & R. 529), the Court of King's Bench decided, that they could not dispense with personal service of the Master's *allocatur* for costs with a view to an attachment, on an affidavit which states that the defendant keeps out of the way to avoid being served. In conformity with these decisions was the practice of the Courts until the decision of the case of *Green v. Prouser*, (2 Dowl. Prac. Cas. 99.) In that case an application was made to obtain an attachment for not paying a sum of money pursuant to a rule of Court, without personal service, under these peculiar circumstances: Two bills, for business done by an attorney, were taxed by the Master. On the taxation it was found that the client had paid more than he ought, to the extent of 62*l.*; this he was requested to refund, but no payment was made by him. The order for taxing was then made a rule of Court, and a time was appointed, for the purpose of serving the attorney with it. In support of the application, an affidavit was made, stating that several calls had been made and expedients tried, in order to serve the rule, but without success. It was further sworn, that the deponents verily believed, that the attorney kept out of the way to avoid being served. The attorney's clerks, however, denied any knowledge of the calls in question having been made at their employer's chambers, and the attorney himself swore, that his reason for not keeping the appointment was his being in a bad state of health. In that case it was urged, that the Court had no power to interfere by attachment, where there had been no personal service of the rule, the disobedience to which constituted the alleged contempt. The above cases were cited, as well as an unreported case, in which Mr. Justice *Patteson* stated, on a similar application, that he had searched for precedents for such a proceeding, but had found none. Lord *Lyndhurst*, however, observed, that "all these cases depend upon their own particular circumstances. On a subsequent day, after taking time to consider, his Lordship said, "that nothing but a very strong case, established to the satisfaction of the Court, could dispense with the necessity of personal service; but, they thought this was such a case, and that the rule should be made absolute, the attachment to lie in the office for a fortnight."

On the authority of this case, Mr. Justice *Patteson* decided, under special circumstances, that

personal service might be dispensed with. The name of the case was, *Allier v. Newton*, 2 Dowl. Prac. Cas. 582; and there the circumstances were these: On taxation, the Master found a considerable sum to be due from the defendant for costs. The order for taxing having been made a rule of Court, attempts were made to serve it on the defendant. The affidavit on which the motion was founded stated that the deponent went to the house of the plaintiff's father; he there saw the father, who asked him what he wanted? The answer was, that the deponent wished to see the son, on which the father answered, "then you shall not have him." The deponent then went to the side of the house, and there saw the defendant working in the shop, with his back towards the window, through which the deponent saw him. He then went into the shop, when the father called out, "Tom, fly." The defendant then rushed out of the shop into the kitchen, and the deponent attempted to follow him. A female there, however, shut the door in his face, and the father then said, 'I have done thee a second time—the bird has flown.' On the statement of these circumstances, Mr. Justice *Patterson* granted a rule *nisi* for an attachment, the service of the rule to be at the defendant's residence. In the course of the same day another such rule, under similar circumstances, was granted. In both these cases his Lordship expressed his fears, that the case of *Green v. Prosser* was a very dangerous precedent, "as now it will be necessary to look into the special circumstances of every case, until at last any sort of service will suffice." In the same term, however, on an application for an attachment for non-payment of costs, pursuant to the Master's *allocatur*, a contrary decision was pronounced by the Court of Exchequer. There the affidavit stated that no personal service had been effected, but that the person endeavouring to serve the *allocatur* had gone to the defendant's house to serve him. He could not get to see him, although he heard his voice in the passage; and ultimately he served the *allocatur* on the daughter in the house, and she promised to give it to her father. There, the case of *Green v. Prosser* was cited; but Lord *Lyndhurst*, C. B., said, "The bearing the party's voice in the house carries the case no further than this; that he was at home when the daughter was served with the *allocatur*; and the question is, whether a service on the daughter is sufficient? This rule ought not to be granted. A demand upon the daughter is no demand at all. It is much better in cases of this kind to adhere to the general rule, that personal service should be required. The Court was the more anxious to lay down this rule, as the case cited might be supposed to authorize a less strict practice."

This decision, if pursued, restores the practice to its former state, so far as it affects the decisions in the Court of Exchequer; and it is to be presumed that the other Courts will now recur to the former practice. The opinion of the Court of Exchequer was the cause of the

change wrought in the practice; and that having been reconsidered and overruled by the same Court, it is to be presumed that for the future personal service will be required in order to obtain an attachment.

As connected with this subject, it may not be improper here to state the opinion of the Court of King's Bench, in the matter of —, *gent.* (1 D. & R. 529), where the Judges "intimated a doubt as to the propriety of an attorney remaining any longer upon the rolls of the Court, who kept out of the way for the purpose of avoiding personal service of a rule for paying money, pursuant to the Master's *allocatur*."

## REVIEW.

*Lectures on the Law of England.* By Richard Wooddesson, D. C. L., late Vinerian Professor, Fellow of Magdalen College, Oxford, and Council to that University. Second Edition, with Notes and Additions. By W. R. Williams, D. C. L., Fellow of Queen's College, Oxford, and Vinerian Fellow. London: Richards and Co.

THE well-earned and long-established fame of Sir William Blackstone has never been, and is not likely soon to be shaken; yet, as all human performances abound with imperfections, it would be too much to predict that his Commentaries can never be surpassed. For the use of the far larger class of readers, we think they will remain unrivalled; although we are aware that, to some students, they are not altogether satisfactory, and perhaps other writers, of a less elegant and popular character, may succeed in rendering more service, if not more gratification. As there are various kinds and degrees of intellectual excellence, some may prefer a work differently constructed, both in its materials and execution. And in order that the study of the law, as a science, may be facilitated by every possible means, we think the profession should encourage any attempt to improve in any respect the plan of the Commentaries, or to elucidate the law by a different method. It is obvious, indeed, that from the vast and complicated nature of the laws of England, they are capable of being presented, with their various grounds and principles, to the mind of the student in many different ways, adapted to the tastes and objects of different classes of students.

With a view to promote every effort of this kind, we now direct the attention of  
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our readers to the three volumes of Dr. Wooddesson's Lectures on the Laws of England, of which a second edition, by Dr. Williams, has been recently published. It is said, in the preface to this edition, that,

"Doctor Wooddesson's Lectures on the Law of England are seldom referred to without an encomium on the discriminating judgment, and clear and accurate method, which eminently characterise that publication. At its first appearance it was received with approbation by judges eminently qualified to appreciate the execution of the several branches of the work. Serjeant Hill, Lord Stowell, Lord Erskine, Lord Colchester, Chief Baron Richards, and Mr. Hargrave, (see 'Vindication of the Rights of British Legislature,' a pamphlet published in 1797, by Dr. Wooddesson, p. 41,) joined with many other contemporaries in avowing their obligations to the author. The same tribute of approbation has been paid in more modern publications, by some expressly, and by others in adopting his observations without acknowledgment.

"He appears to have studied with great care the position occupied by preceding publications, and finding all competition precluded with the Commentaries of Blackstone, as a popular work, to have planned a course of lectures to form the groundwork of the labours of the severer student of law. Whether intended for the bar, the senate, or the magistracy, he will find in these Lectures a lucid order and systematic arrangement, and a precision in the minutest details, which it would be vain to search for in any work on the same comprehensive scale. If the Professor occasionally indulges in a partiality for antiquarian research not necessary for the purposes of his design, yet his investigations may almost invariably be depended upon; whereas Blackstone, in the historical part of his work, is apt to be both vague and inaccurate.

"The editor's experience and observation have led him to think that too much time is ordinarily given to the perusal of the Commentaries, which, however admirable as a general outline, are by no means accurate in general positions, which are impressed on the mind by repeated perusal, and which more mature judgment can hardly efface. These Lectures seem to be as superior to the Commentaries in accuracy of rules and justness of division and definition, as they are inferior in elegance of style and charm of narrative."

As a book, confessedly inferior in style and composition to the Commentaries, and consequently less attractive to the student, more particularly in the outset of his course, these Lectures must ever hold a subordinate place, to their predecessor; yet, it is but justice to say in their behalf, that they are well worthy of perusal, and being prepared on a different plan from the Commentaries, they will serve to exercise the student in

different ways, and tend to impress the mind with the principles of the law, which it is the great object of all elementary treatises to effect.

The plan of the Lectures will be best explained by Dr. Wooddesson's summary of their contents at the conclusion of his introductory discourses, on the Elements of Jurisprudence, in which he treats of the following subjects:—

1. The Law of Nature. 2. Positive or instituted Law. 3. The several species of Magistracy. 4. The Law of Nations. 5. The Law of England, with a General View of the various Sources from which it has been derived. 6. The Study and Profession of the Law.

The learned Professor then proceeds to state the distribution of his materials, with the reasons in favour of his plan, as follows:

"I shall adopt the same threefold division as the Institutes of Justinian, and which appears to me the most clear, and analytically just: considering our laws, first, as referred to Persons, or the several capacities of men in civil life; secondly, as referred to Things or Property; and thirdly, treating of Actions.

"The great relation, in which the members of civil society stand to each other, is that of governors or magistrates, and subjects. All kinds of magistracy or civil dominion may, as we have before seen in the third of these preliminary discourses, be properly referred to three kinds,—legislative, executive, and judicial; or the distinct powers of enacting, executing, and interpreting laws. I shall, therefore, under the first head or division of the laws, as referred to persons, first speak historically of the establishment of the legislature, and of the constituent parts and collective capacity of the parliament; secondly, of the king or supreme executive magistrate; and thirdly, of courts of judicature. In treating of jurisdictions, I shall first consider the courts that proceed according to the general laws of the land, (which account it is impossible to omit consistently with any regard to order, though it must, indeed, chiefly contain obvious matters) next, those that are allowed to govern themselves by a peculiar system, as the civil, ecclesiastical, maritime, and forest laws; then I shall endeavour to trace the origin and nature of the chancellor's office and court, and shall speak of courts of equity in general; and afterwards shall discuss the civil jurisdiction of the lords in parliament, as a court of appeal from inferior tribunals, both of law and equity. After this account of courts, I shall treat of divers magistrates, both of the judicial, and executive or ministerial kind, beginning with some of the great officers of state. Having thus spoken of the several kinds of dominion, or persons governing, we must next contemplate the body of the people governed. This will lead us, first, to consider the clergy, having before treated of those

among them who have judicial authority, under the title of ecclesiastical jurisdictions. This account of the clerical order will introduce a detail of the legal establishment of the national religion. I shall afterwards discourse of the state of persons, (a phrase taken from the Roman civil law) under which I shall include the legal effects of certain disabilities, as of infants and others. I shall then consider persons in their private domestic relations, and shall conclude this first general division, concerning the laws as referred to persons, with an account of corporations, to which an artificial personality is ascribed.

"In the second general division, concerning the laws as referred to things or property, I shall pursue the great distinction which our municipal institutions have made, and which in all parts of them is so strongly marked, between real and personal estate. Under the title of real estates, I shall first speak of the quantity of interest therein; secondly, of the tenure by which such interest may be holden; thirdly, of incorporeal hereditaments, and more particularly of tithes; fourthly, of the joint and contemporary ownership of estates; fifthly, of estates upon condition, more especially of mortgages; sixthly, of estates in possession and in expectancy, as remainders vested, and contingent and executory devises; and lastly, of the title to estates, by deed, by matter of record, and by devise. Under the title of Personal Estate, or property, I shall first mention various means of acquiring it, in a concise and cursory manner, because these subjects are treated of so clearly and fully by Sir William Blackstone, that it would be difficult to make any very useful addition to his account of them; but secondly, I shall allot a whole lecture to the consideration of captures at sea, because I know not where the doctrines relating to them are brought together and digested into any methodical order, and because they merit attention, though they rarely have much dependence on municipal law, strictly so called, and not considered as comprehending the law of nations: after which, I shall conclude this second general division with speaking of the title to personal property by testament, and by succession in cases of intestacy.

"The third general head or division, concerning actions, will subdivide them into criminal prosecutions, private civil actions, and suits in courts of equity. Under the first of these titles, I shall begin our entrance into the *forum contentiosum*, with a short consideration of punishments in general, and of the more general classes of temporal offences, because the definitions of crimes are readily met with in many books, and it is inconsistent with any general design to be prolix on this subject, which is more easily comprehended and less in need of elucidation, than most other parts of our law, and is, besides, so happily digested and illustrated in that valuable work, Serjeant Hawkins's Pleas of the Crown. I shall then speak of offences against the established religion, and of the laws relating to the non-conformity of the Roman Catholics and Pro-

testant Dissenters. The modes of criminal prosecutions will afterwards come into consideration. Here I shall take a transient view of the laws in this respect of some other countries, and shall then treat, first, of indictments; secondly, of informations; thirdly, of appeals; fourthly, of trials by the peers of the realm; fifthly, of parliamentary impeachments; and, lastly, of bills of attainder, and of pains and penalties; in which lecture the moral fitness of such legislative judgments will be discussed. Under the title of Private Civil Actions, I shall first consider real, and secondly, mixed actions; then I shall give some account of the altercations upon record in personal actions, and shall attempt to elucidate, in some measure, the rational foundation of the rules of special pleading. In the following lectures I shall treat of various kinds of personal actions, arising *ex contractu*, or *ex delicto*, or founded on real or implied force and violence. Under the head of actions of Assumpsit, I shall take occasion to speak of divers writings or instruments, in which that form of suit is to be used, particularly policies of insurance; and in treating of actions of Replevin, I shall introduce some remarks on the doctrine of distresses. Under the head of Evidence, I shall first speak of the competency and credibility of witnesses, and, secondly, of the admissibility of various kinds of written proof; and shall conclude the title of Private Civil Actions, with remarks on the incidents previous to, at, and after, trials by jury. The last title is that of Suits in courts of equity. This will lead me, first, to speak of the practical proceedings in those courts, and, secondly, of such matters as are most frequently brought, or most peculiarly appropriated to equitable jurisdictions: as first, the granting of injunctions; secondly, the performance or rescinding of agreements, whether affected by the statute of frauds or otherwise; and, lastly, causes of the testamentary kind, which will be the ultimate subject of our enquiries.

Our readers will observe the differences in the nature and scope of these Lectures, and of the Commentaries; and a comparison of the different way in which each author has treated the same topics, will have the effect of exercising the judgment as well as the memory, and cultivating those faculties which are so essential to future eminence in the profession.

We rejoice in thinking, that as the result of the events now in progress, and by the aid of many learned and liberal writers, assisted we hope in some material degree by the contributors to this work, and by the tone and feeling which we have anxiously endeavoured to diffuse; the time has arrived when the profession of the law, instead of declining in public estimation (as some of its desponding members have anticipated), will attain a still higher rank

for its importance and usefulness than it has ever hitherto reached.

The remarks on the duties and character of the English Advocate, contained in the sixth preliminary lecture, display a right feeling of the dignity and the true interests of the profession; and indeed the whole of that lecture, on the study and profession of the law, is entitled to particular attention.

The labours of the present editor, in pointing out the alterations in the law, since the first publication of the lectures, have been carefully executed.

"In the present edition, (he says) such alterations have been made in the text, as to adapt it to the present state of the law: the notes have been rewritten, retaining the substance, where it is necessary to elucidate the text, and sub-joining such cases and observations as are necessary to furnish the reader with a general view of the subject. It is hoped that the notes, which the alterations of the law since the publication of the original work have rendered necessary, will be found in proper subordination and dependency on the text. The references are made to books of authority, yet generally accessible: and much labour has been bestowed in selecting cases to exemplify general principles, and not decided on their particular circumstances. The object proposed, is to put into the student's hands a clue through the embarrassing magnitude of a law library, and give him a competent knowledge of every branch of the law; keeping in view, at the same time, the combination proposed in the original work, to render these pages not unuseful for occasional reference, even to those who have made some progress: at once *doctis probabiles*, and *plurimos imperitis*. 'Any work which is calculated to abridge the labour of the student, by bringing the points together under each head into one view, under an arrangement enabling him to find that of which he is in search with the least possible delay, is of more value than can be easily conceived by any, but those whose practical experience has taught them its importance.' (Abstracts of Title, vol. i. 215.)

"Long and burthensome statements of cases have been avoided, and the discussion of controversial points left to separate treatises. Where the subject admits of it, an attempt has been made to give a historic interest to the aridity of legal essays, and to render these volumes not uninteresting even to the general reader. It is, perhaps, to be regretted, that the spirit of our law is so little susceptible of the illustrations which would recommend it to an elegant taste; but, like other sciences, there is no royal road to a knowledge of it.

"Nos Veri dogma severum,  
Triste sonant nostra pulsæ testudine chordæ."

On the whole, we think that these volumes may be carefully read after Black-

stone's Commentaries, whereby many important principles will be deeply fixed in the mind, in the same way as the speeches of different counsel tend to strengthen the leading points of a case, by presenting it in different lights, and observing upon and illustrating it by different methods; in some places presenting the matter in a more condensed state, and in others treating it more profoundly.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### COMMISSION OF LUNACY.—COSTS.

*The Court will not allow two sets of costs out of a lunatic's estate for traversing the inquisition, holding that the regular course of opposition to it would be to traverse it in the lunatic's name.*

Mr. Jacob applied, on behalf of the Countess of Kingston, for an order that the Master might tax her costs, charges, and expenses in and about her opposition to the commission which had been issued against her husband.

The Lord Chancellor.—How did it come to pass that Lady Kingston opposed the commission in her own name, as for herself and for her husband also, appearing by two sets of counsel? The usual way would have been to oppose it in the name of her husband only. I cannot order a double set of costs to be paid out of the estate. Lady Kingston's solicitors ought not to have advised her to do this. She, of course, is ignorant of these things. What could be the object of such a course, unless to scourge the estate?

Mr. Jacob believed there was a reason for it, arising from the retaining of counsel. He did not suppose the course taken had been under the advice of her solicitor.

The Lord Chancellor.—Does any body appear for the next of kin, and if so, by whose instruction?

A gentleman behind the bar said he appeared for some of the next of kin, and was instructed to consent to the present application by the same solicitors who instructed Mr. Jacob.

The Lord Chancellor.—The same solicitors instruct one gentleman to appear for the next of kin, to consent to an application, which they instruct another gentleman to make on behalf of Lady Kingston, that her costs may be paid. I see no occasion for throwing this double set of expenses on the estate, and I shall not allow it. It is quite immaterial whether the costs are taken on Lady Kingston's defence, or on Lord Kingston's, provided they are taken without reference to the costs of this application; but I shall only allow one set.

Mr. Jacob.—The solicitors who instructed Lady Kingston had not always appeared for her, but only on the petitions before his Lord-

ship. He hoped the Court would allow them to make an explanatory affidavit.

The Lord Chancellor.—They may do so, but at the risk of costs.

In the matter of the Earl of Kingston, a lunatic, Sittings at Lincoln's Inn Hall after Trinity Term, 1834.

### Vice Chancellor's Court.

#### JURISDICTION.

*Circumstances in which it was held that the Vice-Chancellor may vary an order made by the Master of the Rolls.*<sup>a</sup>

This was a suit for the administration of an estate, in which the plaintiffs and defendants were interested. A decree was made at the hearing by the Master of the Rolls in favour of the plaintiff, entitling him to receive the outstanding debts, &c. Sir Edward Sugden now moved for an order here, to restrain the plaintiff from receiving the outstanding accounts, and from further interfering in the conduct of the suit, and that one of the defendants may be named to prosecute the decree of the Master of the Rolls. He read affidavits charging the plaintiffs with various acts injurious to the interests of all the parties interested in the suit.

Mr. Knight, for the plaintiff, observed, that these acts, if they occurred at all, were previous to the decree of the Rolls. He denied the power of the Court to interfere with the decree of the Master of the Rolls upon matter antecedent to that decree, though such a step might perhaps be taken with reference to subsequent matter. He referred to the act<sup>b</sup> establishing the Court of the Vice-Chancellor, and contended that his Honour had no jurisdiction to alter a decree of the Master of the Rolls, which he would be evidently doing by granting this application.

His Honour the Vice-Chancellor, said that if he found from circumstances stated to him, and which had not been stated to the Master of the Rolls when he had made the order, that great and gross injury would be likely to accrue from the maintenance of such an order, he should feel himself at liberty to interpose, and should be justified in declaring that the plaintiff ought no longer to be allowed to conduct the suit. As this appeared to him to be the case in the present instance he should grant the application.

*Leaving v. Sherrard and others*, Sittings at Lincoln's Inn Hall after Trinity Term, 1834.

### Rolls Court.

#### FEME COVERT.—EXECUTORY INSTRUMENT.—APPOINTMENT.

*A married woman, having a power of appointment over estates vested in trustees,*

*for the benefit of her and her children, agrees to settle them upon herself and her husband and the survivor of them for life, remainder on the children of that marriage, with ultimate remainder to the husband, he agreeing, in the same instrument, to settle his estate on the wife and the children of the marriage: Held, that this agreement was a substantial appointment of the power by the wife.*

This bill was filed on the part of Mrs. St. John, by her next friend, against her husband and the trustees under a deed dated the 15th February, 1831, to which the plaintiff was a party; and it prayed to set aside that deed as fraudulent and void. It was stated no settlement or agreement for a settlement had been made by Mrs. St. John on her marriage with her husband, and that she was entitled, at the time of her marriage, to certain estates vested in trustees, for the benefit of herself and her children, over which she had also a power of appointment. That subsequently to her marriage, she executed an agreement for a settlement, at the request of her husband, by which the estates in question were to be limited for the benefit of the husband and wife, and the survivor of them, and of the children, without any power of revocation or appointment, with an ultimate limitation in favour of the husband himself in fee; and that certain estates belonging to the husband were, by the same instrument of agreement, to be settled for the benefit of the wife and children of the marriage. These latter estates were now alleged to be of no real value, and there are children of the marriage.

Mr. Bickersteth, for the plaintiff, after stating those facts, said the question was, whether this deed, which the wife had been induced to execute at the solicitation of the husband, and in fraud of the interests of any future children of a future marriage, was not to be considered as voluntary and void.

Mr. Evans and Mr. Walcot appeared for the trustees and the husband. The husband had no objection to the inquiry, whether the estates settled by the husband upon the wife did not constitute a *bona fide* consideration for the agreement.

The Master of the Rolls.—I cannot make a decree in this case. The husband and wife collude together to defeat the settlement made for the benefit of the children. The deed is not upon the face of it voluntary; for a consideration is purported to be given by the husband, and there is no proof that that consideration is merely colourable and fraudulent. The form of the deed, which is that of an executory instrument, is immaterial; for I am of opinion, that it is a substantial legal appointment. The bill must, therefore, be dismissed.

*St. John v. St. John*, at the Rolls, Chancery-lane, June 25th, 1834.

<sup>a</sup> See *Whitehouse v. Hickman*, 1 Sim. & S. 104.

<sup>b</sup> 53 G. 3, c. 24.



## Exchequer of Pleas.

FRIVOLOUS DEMURRER.—PROMISSORY NOTE.  
—DEBT.

*A demurrer, on the ground that the declaration, which was in debt on a promissory note, did not shew that the words "value received" were in the note, will not be set aside as frivolous.*

Debt on a promissory note. The declaration did not shew the note to have been given for value received. The defendant demurred on that ground. The plaintiff applied for and obtained a rule nisi, under the late rule of Court, 2 Reg. Gen. H. T. 4 W. 4., to set aside the demurrer as frivolous, and to sign judgment as for want of a plea.

On shewing cause against this rule, it was contended, that the plaintiff ought not to set aside the demurrer unless it clearly appeared to be frivolous; it could not be considered as clearly frivolous, for there was no authority which decided that debt would lie on a bill or note in which the words "value received" were omitted.

*Per Curiam.* It does not appear to us that this demurrer is plainly frivolous. In the case of *Priddy v. Henbey* (1 B. & C. 647), Lord *Tenterden* relies on the fact of the words "value received" being in the bill, as a ground that the action might be maintained. The present rule must therefore be discharged.

Rule discharged.—*Creswell v. Crisp and Churton*, E. T. 1834. Excheq.

## PRISONER.—LORDS' ACT.—COMPULSORY CLAUSES.

*Where it is sought to bring up a prisoner under the compulsory clauses of the Lords' Act, the motion should be accompanied by an express affidavit of service of notice on all the creditors.*

Cause was shewn in the first instance against an application, to bring up a prisoner under the compulsory clauses of the Lords' Act. It was objected, that it did not appear from the affidavits in support of the application, that all the creditors of the defendant had been served.

In support of the motion, it was contended, that as the affidavits swore that a list of the creditors had been obtained from the clerk of the papers at the King's Bench prison, and that each of such creditors had been served with notice, that was sufficient.

*Per Curiam.* That list is not verified by affidavit. It is not therefore shewn that all the creditors of the defendant have been served with notice, of the intention to bring up the defendant under the compulsory clauses of the act. The directions of this statute, therefore, not having been complied with, the present motion cannot be granted.

Rule refused.—*Grove v. Parker*, E. T. 1834. Excheq.

## SECURITY FOR COSTS.—TEMPORARY ABSENCE.

*A mere temporary absence abroad is not sufficient to render a plaintiff liable to find security for costs.*

On shewing cause against a rule nisi for compelling a plaintiff to find security for costs, on the ground of his being out of the jurisdiction, it appeared that the plaintiff was a West India merchant, with a residence in this country, but was at present in Southern Australia, whither he had gone for a temporary purpose, and was expected shortly to return thence.

*Vaughan*, B. and the other barons, were of opinion that the principle which required security for costs to be given did not apply in such a case as the present, therefore directed the rule to be discharged with costs.

Rule discharged with costs.<sup>a</sup> *Taylor v. Fraser*, E. T. 1834. Excheq.

## AFFIDAVIT OF DEBT—INDORSEE AGAINST DRAWER.

*In an affidavit of debt by indorsee against drawer, the default of the acceptor need not be shewn.*

This was an application to discharge the defendant out of custody, on account of a defect in the affidavit to hold to bail. The action was on a bill of exchange, by the indorsee against the drawer.

The affidavit, after stating the acceptance of the bill, proceeded thus:—"And which having become due is wholly unpaid." The affidavit ought to have alleged a presentment, otherwise no default is shewn.

*Per Curiam.* None of the forms state that the drawer is not liable without notice; or any presentment for payment. The affidavit states that the bill has become due, and has not been paid.

Rule refused.—*Weedon v. Medley*, T. T. 1834. Excheq.

## King's Bench Practice Court.

## WARRANT OF ATTORNEY.—AFFIDAVIT OF EXECUTION.

*The Court will not permit judgment on a warrant of attorney to be entered up at the suit of executors, if the affidavit of execution does not mention them, although they are mentioned in the warrant itself.*

Motion to enter up judgment on an old warrant of attorney. The peculiarity of the case was, that although the warrant of attorney authorized the entering up of judgment at the suit of one *Thompson*, his "executors or administrators," the affidavit of the execution made no mention of "executors and administrators." As, however, the rule would be drawn up on reading the warrant of attorney, as well as the affidavit of execution, the defect might be considered as cured.

<sup>a</sup> A similar case was decided to the same effect in the course of the day.

*Patteson, J.*, thought not, because the affidavit might refer to some warrant of attorney, where the words "executors or administrators" are not introduced. I cannot therefore grant the rule.

Rule refused.—*Baldwin and another, executors of Thompson, v. Atkins*, T. T. 1834. K. B. P. C.

PRISONER.—INDORSEMENT ON CA. SA.—  
LACHES.

*After a lapse of two terms it is too late even for a prisoner to take advantage of an omission to indorse his addition and place of abode on a ca. sa.*

A rule nisi had been obtained in this case, calling on the plaintiff to shew cause why the writ of *ca. sa.* in this case should not be set aside for irregularity, and the defendant discharged out of custody, on the ground that there was no indorsement on the writ of the defendant's addition and place of abode, pursuant to the directions of H. T. 2 & 3 G. 4, K. B., which directs that the place of abode and addition or other description of the defendant shall be indorsed.

On shewing cause against this rule, it was contended, that the omission was immaterial, as the words of the rule were not imperative, and only required that the plaintiff should give the best description he could of the defendant's addition and place of abode; and that the rule was made for the benefit of the sheriff and not for the defendant. It was further contended, that the application was too late, the defendant having been in custody under the writ since Michaelmas Term last.

In support of the rule, it was submitted, that no knowledge of the facts could justify the absolute omission of the defendant's addition and place of abode; and that as the defendant was a prisoner, no lapse of time could operate to his prejudice or prevent him from availing himself of an irregularity; and that the rule of Court was not made, as supposed, for the benefit of the sheriff, but for the purpose of identifying the defendant with the proceedings in their different stages.

*Patteson, J.* observed, that he did not adopt the argument that the rule was made for the benefit of the sheriff; but the application was clearly too late, and therefore discharged the rule.

Rule discharged.—*Constable and another v. Fothergill*, T. T. 1834. K. B. P. C.

UNIFORMITY OF PROCESS ACT.—CAPIAS.—  
WARNING.

*In a writ of capias, the words "hereunder written" need only be introduced if the warning is placed at the foot of the writ.*

This was an application to discharge the defendant out of custody, on the ground of a defect in the writ of *capias*, on which he had been arrested. The defect consisted in the omission of the words "indorsed hereon."

The words in the body of the writ are, "that within eight days after execution hereof on him, inclusive of the day of such execution, he (the defendant) should cause special bail to be put in for him in our Court of to the said action, and that in default of his so doing such proceedings may be had and taken as are mentioned in the *warning hereunder written or indorsed hereon*." Here the warning was placed at the foot of the process instead of the back of it. It was contended, however, that the form given in the schedule of the Uniformity of Process Act must, in all cases, be strictly and literally pursued.

*Littledale, J.*—It cannot be necessary to introduce in all cases the words "hereunder written or indorsed hereon." When the warning is put at the foot of the writ, the words should be "hereunder written." Here the warning was placed at the foot of the writ, and, therefore, the words introduced should be "hereunder written," and the words "indorsed hereon" were properly omitted.

Rule refused.—*Bridgman v. Curgenven*, M. T. 1834. K. B. P. C.

EJECTMENT.—IMPOSSIBLE DAY.—NOTICE.

*If sufficient information as to the time of appearance is given in the notice, the statement of an impossible date in entitling the declaration, is immaterial.*

Motion for judgment against the casual ejector. The declaration was entitled of "Trinity Term, 5 Wil. 4;" but the notice at the foot of it was dated 20th February, 1834. From this the tenant in possession would clearly learn that he must appear in Michaelmas term in the present year.

*Littledale, J.* Take your rule.

Rule granted.—*Doe d. Gore v. Roe*. M. T. 1834. K. B. P. C.

SECURITY FOR COSTS.—LACHES.—FRESH  
STEP.

*In certain cases the defendant may move for security for costs, even though he has taken a step since his knowledge of the plaintiff's absence from England.*

The plaintiff in this action took out his writ in June last, but did not declare till the end of October. A summons for further time to plead was taken out, and the defendant afterwards obtained a rule for security for costs. It was shewn by the affidavits that the defendant knew of the plaintiff's absence from this country before he obtained time to plead. On shewing cause against this rule, it was contended that it was too late, the defendant having taken a fresh step in the cause, after he knew the plaintiff was out of England.

*Littledale, J.* The language of the Court, in the case of *Duncan v. Saint*,\* is very general, and the rule cannot be taken to apply necessarily to all cases, that a defendant cannot ap-

ply for security for costs after knowledge of the plaintiff's absence abroad. Although under some circumstances a fresh step has been taken by the defendant, after a knowledge of the plaintiff's absence from the country has reached him, the Court may still allow him to obtain security for costs; I do not think the defendant was bound to take any step towards obtaining such security, until he perceived that the plaintiff, by declaring, was in earnest. Here, the plaintiff sued out his writ in the month of June, but did not declare until the end of the month of October. The defendant is entitled to have his rule made absolute.

Rule absolute.—*Shaw v. Whitby*. M. T. 1834. K. B. P. C.

#### INFERIOR JURISDICTION.—COUNTY PALATINE OF LANCASTER.

*It is necessary, in order to issue execution out of a Superior Court, on a judgment obtained in the Common Pleas of Lancaster, to shew that defendant has removed himself and effects out of the jurisdiction.*

On a motion to issue execution on a judgment obtained against the defendant in the court of Common Pleas of the county palatine of Lancaster, the affidavit did not state, according to the provisions of the 33 Geo. 3. c. 68, that the defendant had removed himself out of the jurisdiction, and that he had left no effects in the county of Lancaster; but by the 4 and 5 W. 4, c. 62, § 31, it was provided, that "it shall and may be lawful for any of the superior courts at Westminster, upon a certificate from the prothonotary of the said court of Common Pleas at Lancaster, or his deputy, of the amount of final judgment obtained in any such action, to issue a writ or writs of execution thereupon, for the amount of such judgment, and the costs of such writ or writs and certificate to the sheriff of any county, city, liberty, or place, against the person or persons or goods of the party or parties against whom such final judgment shall have been obtained, in such manner as upon judgment obtained in any of the said courts at Westminster."

The certificate mentioned in the statute was, however, produced.

*Littledale, J.*, thought that as the commencement of the section was, "that whenever a plaintiff or defendant in any action or suit in which judgment shall be recovered in the said court of Common Pleas at Lancaster, shall remove his person, or goods, or chattels, from or out of the jurisdiction of the said court of Common Pleas at Lancaster, it shall and may be lawful for any of the superior courts at Westminster"—it was still necessary that it should be shewn in the affidavit that the defendant had removed himself out of the jurisdiction.

Rule refused.—*Lord v. Cross*. M. T. 1834. K. B. P. C.

#### INCONVENIENCE OF THE COURTS AT WESTMINSTER.

It may assist those who are engaged in endeavouring to remove the Courts from Westminster to the neighbourhood of Chancery-lane, to be reminded of the various inconveniences which attach to their present construction as well as locality. These inconveniences have often been pointed out to the Government and the House of Commons, by the members of the profession. We have collected the substance of several memorials on this subject, and proceed to state some of the details which they contain.\*

In constructing the Courts of Justice it is obvious that ample accommodation should have been provided, 1st, for the learned Judges and their numerous officers; 2dly, sufficient space for the practising counsel, attorneys and solicitors, and for students; and 3rdly, accommodation for a reasonable portion of the public. These essential requisites were not sufficiently attended to in erecting the Courts at Westminster, which are much too small, and now incapable of being improved.

When the number of the practitioners in the law, and the vast extent of litigation is considered, it may reasonably excite our wonder, that within the confined limits of the small court-rooms at Westminster, it has been possible to transact the ordinary business of each term. The bar exceeds twelve hundred members; the London solicitors are nearly three thousand, and the country solicitors about five thousand. The number of the students for the bar and the articulated clerks of attorneys bear a due proportion to those who are in actual practice. It is true that a minor part only of these numerous bodies have occasion at one time to be present in the Courts; yet still the deficiency of space and accommodation is almost incredible in a country where it has not been usual to spare money for important objects. The practitioners of the law being thus numerous, we may form some conjecture of the vast number of suitors, who, with their witnesses and connexions, must occasionally resort to these Courts; and estimate the consequent confusion and inconvenience amidst which justice is unavoidably administered. Numerous as are the mistakes and omissions which occur, we

\* These memorials were presented by the Metropolitan Law Society, now merged in the Incorporated Law Society.

may indeed marvel that they are not ten times more frequent.

Amongst the details which were submitted to the Legislature and the Treasury, it was represented,—

That the attorneys and solicitors, in performing their professional duties, in behalf of their clients, are often compelled to be in attendance upon the Courts at Westminster, from nine o'clock in the morning, during several hours of each day, and sometimes from the sitting till the rising of the Courts at a late hour in the evening. It was pointed out, in particular, that from the construction of the Court of King's Bench, where the greatest pressure of business exists, the attorneys are not only subjected to inconvenience for the want of seats for their accommodation, but are deprived of adequate means of conferring with their counsel and with each other, by which their clients sustain considerable loss and disadvantage. The space allotted in the Court of King's Bench to the attorneys, is not capable of containing more than about twenty persons, whilst the number in attendance is generally more than five times that amount; and even this small space is frequently occupied by strangers, or persons not immediately concerned in the business before the Court. Amongst the suitors and witnesses who have occasion to attend the Courts, are females and aged persons, who are not only without proper accommodations in the interior of the Courts, but are not provided with rooms or places adjoining, wherein they can wait in attendance until wanted.

One of the memorials, setting forth some of the foregoing particulars, was presented in 1822. This was before the Courts were altered: and in reply, the lords of the treasury stated that the space allotted for the new courts was so much confined, that it would be impossible to apply any part thereof to the accommodation of the members of the profession.

In a petition of Sir John Soame to the House of Commons, in May, 1824, it is stated—

That by the adoption of the design of the committee of the House, many essential parts of the plan of the Courts as then executed, would be disarranged and counteracted, and the accommodation of the professional gentlemen engaged in the Courts materially abridged. Thus on the basement story the rooms for barristers and solicitors attending the courts of Exchequer and Common Pleas would be rendered useless, by being deprived of light; on the ground-floor, the entrance from Westminster Hall into the Court of King's Bench was contracted from an airy and spacious vestibule to a narrow passage, and the Court itself exposed to the noise of New Palace Yard; the separate entrances for the Lord Chief Justice, and for the barristers, with a retiring-room for jurors, were wholly omitted; the retiring

room for the Lord Chief Justice was abridged in size by the Tudor Tower proposed to be erected at the north-west angle of the building; on the first floor, the accommodations for the students, the solicitors and their clients, connected with the Court of King's Bench, with a spacious law library attached to the same, and with a direct communication to the records of the Court of King's Bench, were entirely done away, and several apartments in the attics were sacrificed.

Another memorial was presented in 1830; in reply to which the Lords of the Treasury expressed their regret—

That when the new courts of law were erected, and when they were altered, more ample accommodation was not afforded than the present courts appeared calculated to give to the several persons who had occasion to attend them; but their lordships having made careful enquiry as to the possibility of extending the accommodation, and as to the expense attending the same, did not consider that they should be justified, under the then present circumstances, in incurring the large expenditure to which the necessary alterations would give rise, even if they were prepared to direct the building at Westminster Hall, which had been once partially pulled down and rebuilt, to be again subjected to a similar operation.

It will thus be observed, that the evil complained of, was not disputed at the Treasury; but the ever formidable objection of *expense* was interposed, and nothing whatever was done. The circumstances are now, however, essentially changed. A new and costly building must be erected. These rooms, with their adjoining offices and apartments, however inadequate for Superior Courts of Justice, might be rendered available for committee-rooms, which will be more and more required for the business of legislation.

Under the alterations effected by the recent change in the constitution of Parliament, *open committees*, where part of the public may be conveniently admitted, as to a court of justice, will be constantly required, and the present court rooms are well adapted for such purposes. Their appropriation in this manner will save much expense in the new parliamentary buildings, and they afford the means of conducting this important adjunct of legislation without delay or inconvenience. All parties would be benefited by the change—the Parliament, the Public, and the Profession.

So much for the *construction* of the Courts; and we shall advert to various other inconveniences connected with their *locality*, in our next Number.

## EXCHEQUER OF PLEAS SITTINGS.

All the causes entered for the first Sittings in Middlesex, will stand over to the second Sittings (Nov. 17th), as the cause of *De Beauvoir v. Rhodes* will occupy the 12th and 13th November.

The entry of causes for the second Sittings in London closes on Wednesday evening, the 19th, at 8 o'clock.

Mr. Baron Bolland will try the causes in Term.

## ANSWERS TO QUERIES.

### *Law of Property and Conveyancing.*

COPYHOLD. VOL. 8, P. 495.

Under the will of *W. S. R.* his mother was clearly entitled to be admitted to the copyhold premises in question; but as she was not admitted, her will was quite inoperative as to them. *Wainwright v. Elwell*, 1 Mad. 637. Whether on the death of an unadmitted devisee, her heir at law, or the heir at law of her devisor, is entitled to be admitted, is a point which I believe has not received any judicial decision; but the better opinion is, I think, in favour of the heir at law of the devisee. See, however, *contra*, *Watkins on Copyholds*, by Coventry, vol. 1, p. 160, note. If, from lands being blended together, the lord is unable to ascertain the land of any particular tenant, he may bring a bill of discovery in equity. See *Clayton v. Couke*, 2 Atk. 449. In this case, therefore, the lord ought to file such a bill against the heir at law of the mother of *W. S. R.*, and after the lands are ascertained he may seize them. J. W.

## QUERIES.

### *Law of Property and Conveyancing.*

REGISTRY OF DEEDS.

I shall feel obliged if you or any of your correspondents can refer me to a case deciding that the memorandum of the registry of a deed affecting property in Yorkshire or Middlesex, is included in the counting of such deeds. I presume it is, as the memorandum is evidence of the registry; but I am not aware of any case which has been decided on the point.

S. W.

LEASE.—INSURANCE.

After the usual covenant for insurance, is the following: "and in default thereof (the production of the policy) it should be lawful for the said [lessor], his executors, &c. to insure same, and charge [lessee], his executors, &c. with all such monies so to be paid on account thereof, and on nonpayment to distrain." Will an ejectment lie for breach of the cove-

nant? The lessor has applied on the premises for the policy, but without effect: is he bound either to insure, or be liable to his superior landlord? X. F.

### *Common Law.*

ACCOMMODATION BILL.

Is the acceptor or drawer of a bill or note liable for the amount of a bill or note to the holder, the holder knowing the same to have been merely an accommodation bill at the time he took it? E. S. H.

## THE EDITOR'S LETTER BOX.

LEGAL ALMANACK.

We have for a long time had under consideration the plan of a *Legal Almanack*; and, at the suggestion of several Subscribers, as well as from a conviction of its utility, have now determined to publish it immediately. A considerable part of the work is already printed. It will comprise—1. A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices: the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c. 2. The hours of attendance at the Common Law, Equity, and other Offices, carefully ascertained. 3. The Terms and Returns of Writs. 4. The Judges and Officers of all the Courts, including the recent changes and appointments. 5. Barristers, with the date of their Call, and Regulations of the Inns of the Court. 6. Perpetual Commissioners under the Fine and Recovery Act. 7. Members of the Incorporated Law Society, with the regulations for admission. 8. The Circuits. 9. The Quarter Sessions; and various other Lists and Tables of professional utility.

Information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers, will be carried down to the latest time.

It was at first intended to publish the work in two parts; but by some additional exertion, we hope to complete the whole in the course of the present month. We are obliged by the hints which we have received, and shall willingly attend, so far as practicable, to any further suggestions. Considering the great trouble and expence of the compilation, we think the price will be moderate.

The Letters of Y. Z.; M.; and J. C. are under consideration.

The Queries and Answers of A. C. P.; Zeta; E.; Amicus Curiae; James W.; A Constant Reader; W. W., and M. T. have been received.

We cannot yet dispose of our arrear of Queries; but will do all in our power to accommodate our correspondents.

# The Legal Observer.

Vol. IX. SATURDAY, NOVEMBER 22, 1834. No. CCXXXVIII.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agimus.

HORAT.

## THE CHANGE OF MINISTRY.

THE event which we have for some time<sup>a</sup> predicted as likely to happen, has now occurred. Lord Brougham has ceased to be Chancellor. We are far from feeling any improper exultation at his fall, but we think it right to justify the opinion we have long entertained and pointedly expressed respecting him. He has ever set at naught his own profession; he cannot hope that it can show much regret at his leaving office.

If Lord Brougham continues to hold the great seal until the 22d of November, he will have been just four years in office; and certainly, with every desire to hold an impartial judgment as to him and his measures, we have during his career had many more occasions to dispraise than praise him. His Bankruptcy Court Act, although it has effected some benefit, must, in its principal part, be admitted to be a failure. His Local Courts Bill, four times introduced, and twice thrown out and twice abandoned, was fraught with evil, and would have subverted the present administration of justice throughout the country. His love of power and patronage cannot be disputed; while he abolished some sinecures, he created many important offices, and established so many boards of commissioners, as seriously to threaten the independence of the bar. In his distribution, as well of that patronage which fell to his hands in the natural course of things, as that which owed its origin to himself, he cannot be said to have been always guided by an earnest desire to appoint the fittest persons; the judges elevated

during his Chancellorship are unquestionably not esteemed the most eminent in the profession; and his minor appointments are not much better. To him is also to be attributed the scandal of making promises as to the official situations of the crown, and breaking them. Neither can we forget that he has let no opportunity escape of attacking and endeavouring to degrade his own profession. His recent "adventures," for we know no better word, in the country, although unbecoming the high situation he held, were deserving rather of ridicule<sup>b</sup> than any grave censure. They can only now be considered as an attempt to secure himself in the office which he best knew was slipping from under him. We have repeatedly shewn that Lord Brougham was chargeable with all these faults; and we may confidently refer to our preceding pages to shew that we press nothing against him which we cannot substantiate.

On the other hand, we are indebted to him for some excellent reforms in the Court of Chancery, and for the carrying through, though not the originating, the Central Criminal Court Act, and some minor measures.

His dispatch of business must be also admitted; but here we cannot give unmixed praise. He disposed of his paper, but he did not, in general, satisfy either the parties or the profession. He seldom patiently debated a new point with a desire to settle it on its true principle. Where he found decided cases to assist him, he went through them, and simply made up his mind on their effect; where he found conflicting facts, he listened to them, and

<sup>a</sup> See 8 L. O. 417.

<sup>b</sup> See 8 L. O. 498.

speedily came to a conclusion. This to some may be considered all that is required of a Judge, and it may perhaps be our prejudices which make us require something more; but they tell us that he never shewed himself a "master of equity;" that his decisions can never be esteemed of much value; that he rarely took, or even seemed to desire to take, an original view of a case; that he generally decided it on the grounds suggested by counsel; that he rarely drew from his own store of principles; and that while we give him the greatest credit for unwearied industry, we cannot say that he possessed any other judicial quality in an eminent degree.

The arrangements for supplying his place, as all our readers know, are not and cannot be completed until the return of Sir Robert Peel; but there is no doubt, we believe, about his successor. It is, however, not our intention to throw a darker shade over the departing Chancellor by painting the merits of Him who is to come in glowing colours. His judicial character we endeavoured to describe when he resigned the Great Seal.\* He has since rather gained than lost character as a Judge. As he has hitherto stood up as the friend and champion of our own profession, we cannot but rejoice at his being clothed with greater powers, and only do him bare justice when we say that if the Great Seal be again entrusted to him, it will give almost universal satisfaction to the profession.

Of the minor appointments our readers know as much as we do. We believe that nothing is finally arranged, and we shall not mention the thousand rumours on the subject.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

No. X.

### THE ACT FOR IMPROVING THE LANCASTER COMMON PLEAS COURT.

4 & 5 W. 4, c. 62.

THIS is intituled "An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of Lancaster." It received the royal assent on the 13th of August, 1834, and came into operation on the 1st of September, 1834.

The preamble recites, that various alterations and improvements have recently been made by the authority of Parliament and otherwise, in the practice and proceedings of the superior Courts of Common Law at Westminster; and that it is expedient certain alterations and improvements should be effected in the practice and proceedings of the Court of Common Pleas at Lancaster.

The alterations made by the authority of Parliament thus referred to, were effected by the Uniformity of Process Act, 2 W. 4, c. 39, the Speedy Judgment and Execution Act, 1 W. 4, c. 7, and the Law Amendment Act, 3 & 4 W. 4, c. 42. The other alterations took place chiefly under the Rules of Court of Hilary Term, 1834, relating to the Practice and Pleadings in the superior Courts.

The several parts of the act may be classed as follows:—

*1st. Power of the Judges of the Superior Courts.*—All or any of the Judges of the superior Courts may be appointed Judges of the Common Pleas at Lancaster, but the Judges before whom the Assizes for the county shall from time to time be held, and their officers, are alone entitled to the fees and emoluments heretofore received by the Judges of the County Palatine and their officers. (s. 24.)

Special cases, by consent of the parties, may be stated for the opinion of one of the superior Courts. (s. 16.)

The Judges may make Rules for altering and regulating the mode of pleading, and transacting records. (s. 17.)

They may also make rules relating to the admission of documents to be offered in evidence, and the costs of omitting to apply for or refusing such admission. (s. 17.)

When a plaintiff or defendant shall remove his person or goods out of the jurisdiction of the Palatine Court, the superior Courts (on a certificate from the prothonotary of the Palatine Court or his deputy, of the amount of the judgment) may issue execution for the judgment, and the costs of the writ and certificate, to the sheriff of any county, &c. against the person or goods, in the same manner as on judgments in the superior Courts. (s. 31.)

If the rules of the Palatine Court cannot be enforced by reason of the non-residence of the party within the jurisdiction, any one of the superior Courts (on a certificate by the prothonotary and an affidavit of the non-residence,) may make such rule a rule of such superior Courts, and the same shall be enforced as a rule of such Court. (s. 32.)

Whenever by act of Parliament, or under the authority of any act, or by any rule or order of the superior Courts, or of any of the Judges, any Rules or Orders shall be made for amending or regulating the proceedings, practice, or pleadings of any of the superior Courts, the Judges of the Palatine Court, or any two of them, may order such Rules, &c.

\* See 1 L. O. 86.

or any part thereof, to be adopted in the Palatine Court. (s. 34.)

The Judges of the superior Courts may regulate the fees of the officers of the Court and the attorneys, not exceeding the fees now received. (s. 25.) [Will this authorize the reduction of fees on mandates, and the trial of causes in the County Palatine from the superior Courts?]

2d. Process.—The process in all personal actions commenced in the Common Pleas at Lancaster, where it is not intended to hold the defendant to bail, shall be according to the form No. 1, in the schedule to this act. The form of the writ is not to be varied on account of any privilege of parliament or otherwise. (s. 1.)

In the writ and copy are to be mentioned the place *and* [of] residence or supposed residence of the defendant. (s. 1.)

The writs authorized by the act are to be the only writs for commencing personal actions in the cases to which such writs apply. (s. 15.)

All writs shall be tested in the name of the Chief Justice of the Palatine Court; or in case of a vacancy, in the name of one of the other Judges. (s. 33.)

Writs of *venire facias juratores*, shall be dated on the day next preceding the first commission day of each assizes, unless it happens on a Monday, and then on the preceding Saturday. (s. 33.)

Writs of *habeas corpora juratorum* are to be dated the day of the return of the *venire*. (s. 33.)

All other writs excepting exigent and proclamation, are to be dated the day on which they are issued. (s. 33.)

And all writs of execution may be returnable immediately after the execution thereof. (s. 33.)

The name or firm and place of business or residence of the attorney and agent, (if any) to be indorsed on the writ. If the plaintiff sue in person, a memorandum thereof, and of the city, town, or parish, and the hamlet, street, and number of the house to be indorsed. (s. 10.)

The process to arrest shall be by *capias*, according to the form No. 4, and so many copies, (with the memorandum of notice subscribed thereto, and all indorsements,) as there may be defendants, are to be delivered to the sheriff or officer to whom the writ is directed, or who may have the execution and return thereof, and who shall cause one copy to be delivered to every person on whom such process shall be executed, and indorse on such writ the day of the execution, whether by service or arrest. (s. 4.)

If any defendant be taken or charged in custody and imprisoned for want of sureties, the plaintiff may declare and proceed according to the practice of the Court as on *meane* process. (s. 4.)

The plaintiff or his attorney may direct one or more defendants to be arrested, and the others to be served with the *capias*; and such service shall be of the same effect as the service of the writ of summons. (s. 4.)

No writ shall be in force for more than four calendar months from the day of its date, including such day, but writs of summons and *capias* may be continued by alias and pluries. (s. 8.)

The prothonotary of the Court, or his deputy, is to issue the writ. (s. 1.)

The process is to be served in the manner heretofore used, in the County Palatine *and not elsewhere*. The person serving it is to indorse the day of the month and week of the service. (s. 1.)

Writs of summons against corporations aggregate, may be served on the mayor or other head officer, or the town clerk, treasurer, or secretary of such corporation; and against the inhabitants of a hundred or other district, on the high constable, or peace officer. (s. 11.)

The attorney whose name shall be indorsed on the writ, shall on demand in writing declare whether such writ has been issued by his authority, and the Court or a Judge may order him to state the occupation, &c. and abode of the plaintiff.

If the attorney declare that the writ was not issued with his authority, the Court or a Judge may order the defendant's discharge. (s. 13.)

After the service or execution of any writ of summons, *capias*, or detainer, proceedings to judgment and execution may be had at the expiration of eight days, and if the last of such days fall on a Sunday, Christmas day, Good Friday, or any day appointed for a public fast or thanksgiving, the following day shall be considered as the last. (s. 9.)

It is probable that this provision will be extended to Easter Monday and Tuesday under the 2 Wil. 4, c. 39, and the rule of Easter Term, 2 Wil. 4.

As to the writ of *Distringas*, see Sec. III.

3rd. *Appearance*.—The appearance is to be made by delivering to the prothonotary, or his deputy, a memorandum in writing, dated on the day of delivery, according to the form No. 2. (s. 2.)

In case it appears by affidavit to the satisfaction of the Court, or one of the judges, that a defendant has not been personally served with the writ of summons, and cannot be compelled to appear without some more efficacious process, the Court or judge may order a *distringas* to issue, directed to the sheriff or other officer, to compel appearance.

The *distringas* is to be according to the form No. 3, and to be served on the defendant, if he can be met with; or if not, to be left at the place where such *distringas* shall be executed. A true copy of such writ and notice is to be delivered therewith to the sheriff or other officer, the writ being returnable on a day certain, not less than fifteen days from the teste. If the *distringas* be returned *non est inventus* and *nulla bona*, and the plaintiff shall not intend to proceed to outlawry or waiver, and the defendant shall not appear in eight days after the return, and it appear by affidavit to the satisfaction of the Court, or one of the judges, that due means were used to execute the writ, the Court or judge may authorize the plaintiff to enter



appearance for the defendant, and proceed to judgment and execution. (s. 3.)

All such proceedings as are mentioned in any writ, notice, or warning to be issued under the act, may be taken in default of a defendant's appearance, or putting in bail, as the case may be. (s. 12.)

**4th. Pleadings.**—The judges of the Common Pleas at Lancaster (namely, the judges who hold the assizes for the County Palatine, and such other judges of the superior Courts as may be appointed under s. 24), or any two of them, may make Orders and Rules for altering and regulating the mode of pleading, and entering and transcribing pleadings, judgments, and other proceedings. (s. 17.)

This provision is in accordance with 3 & 4 Wil. 4, c. 42, s. 1. But the Rules and Regulations are not required, as under that act, to be laid before parliament six weeks before coming into operation. The principal alteration in Pleading under the Law Amendment Act has been the limitation of one count or plea to one cause of action or defence. The judges of the Palatine Court will probably adopt the rules of the superior Courts, both as to practice and pleading.

The costs to be allowed for preparing pleadings are to be the same as in the superior Courts. (s. 35.)

**5th. Paying Money into Court.**—In all personal actions (except for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, crim. con., or debauching the plaintiff's daughter or servant) the defendant, by leave of the Court, or one of the judges, may pay into Court a sum by way of compensation or amends, under such regulation, as to costs of pleading, as the judges by any Rules or Orders may direct. (s. 23.)

The right to pay money into Court was previously confined to *debts*, and did not extend to cases where damages were sought to be recovered for a breach of contract, or a wrong of uncertain amount.

**6th. Admissions.**—The judges of the Court may make Rules and Orders, on application a reasonable time before the trial, touching the voluntary admission of such documents or copies as are intended to be offered in evidence, and touching the inspection thereof, and the costs of proof in case of omitting to apply for admission, or not producing the documents or copies, or refusal to make admission. (s. 17.)

This enactment is similar to that of 3 & 4 Wil. 4, c. 42, s. 15.

**7th. Witnesses.**—The service of a subpoena on any person in any part of England or Wales shall be as effectual, and entitle the party to the like remedies, as if served within the jurisdiction of the Palatine Court. (s. 29.)

If such person shall not appear, the Court, or one of the judges, on proof of personal service, may transmit a certificate of default to the Court of King's Bench in England, and the latter Court may proceed according to its practice. (s. 29.)

But no proceeding shall be taken, unless it

appear that a reasonable sum to defray the expences of attending to give evidence had been tendered at the time of the service of the subpoena. (s. 30.)

**8th. Writs of Inquiry.**—The 8 and 9 Wil. 3, c. 11, provided that the damages on bonds for the performance of covenants or agreements, should be assessed under a writ of inquiry, before a judge of assize or nisi prius.

In order to save the unnecessary expence of thus executing writs of inquiry under 8 and 9 Wil. 3, c. 11, it is now enacted (unless the Court or one of the judges shall otherwise order), that the sheriff shall be directed to summon a jury before him instead of the justices of assize, and a return shall be made on a day certain, and such proceedings had as if the writ had been executed before a justice of the assize. (s. 18.)

Other writs of inquiry shall also be returnable on a day certain. (s. 19.)

Upon the return of the writ of inquiry, judgment may be signed, unless the sheriff, or his deputy, certify that the judgment ought not to be signed till the defendant has had an opportunity to apply for a new inquiry. (s. 21.)

This is in conformity with the Speedy Judgment and Execution Act, 1 Will. 4, c. 7.

**9th. Writs of Trial.**—In conformity to the provision in the Law Amendment Act, 3 & 4 Wil. 4, c. 42, s. 17, the present act, in actions for debts or demands not exceeding 20*l.*, authorizes the Court or a judge (if satisfied that the trial will not involve any difficult question of law or fact) to order the issues to be tried before the sheriff or any judge of a court of record for the recovery of debts in the county palatine. (s. 20.)

Upon the return of the writ of trial, judgment may be signed, unless the sheriff, his deputy, or the judge, certify that the judgment ought not to be signed till the defendant has an opportunity to move for a new trial. (s. 21.)

**10th. Special Cases.**—The parties, after issue, may, by consent, and under the order of one of the judges, state the facts, in the form of a special case, for the opinion of the Court, or of one of the superior Courts of Common Law, and agree that a judgment shall be entered for the plaintiff or defendant immediately after the decision. (s. 16.)

A similar provision to this was made by the 3 & 4 Wil. 4, c. 42, s. 25.

**11th. Vacating Judgments, New Trials, &c.**—The Court may order any judgment to be vacated and execution stayed and an arrest of judgment entered, or a new trial or writ of inquiry granted. (s. 22.)

Any party in any action may apply by motion to any of the superior Courts *in banco*, within the usual period, for a new trial, nonsuit, &c.; and if an order be made, the same, or an office copy, is to be delivered to the prothonotary of the Palatine Court or his deputy, and proceedings shall be had thereupon, as the case may be. (s. 26.)

But judgment and execution shall not be stayed, unless the party moving shall enter into recognizance with sureties to the satisfaction

of the Court, to prosecute the application, and if refused, to pay the damages and costs. (s. 27.)

Nothing in the present act is to prevent the Palatine Court from granting any new trial, setting aside or entering a nonsuit, or altering a verdict, as heretofore. (s. 28.)

12th. *Outlawry*.—On the return of *non est inventus* as to any defendant against whom a writ of *capias* shall be issued, and also on the return of *non est inventus* and *nulla bona* as to any defendant against whom a writ of *districus* shall be issued, it shall be lawful to proceed to outlaw or waive the defendant by writs of *exigifaciens* and proclamation, and otherwise, as already in practice on the return of *non est inventus* to a *pluries capias* after an original writ.

But such *exigent*, proclamation, &c. is to be returnable on a day certain in term, and tested on the return day of the *capias* or *districus*, and the subsequent writs are to bear teste on the return day of the preceding writ, and there are to be fifteen days between the delivery of each writ to the sheriff and its return. (s. 5.)

After judgment in any action commenced by writ of summons or *capias*, proceedings to outlawry may be taken and judgment of outlawry given, as now done in actions by original writ. But every outlawry or waiver under this act may be set aside by writ of error or motion, in like manner as now set aside. (s. 6.)

13th. *Prisoners*.—When it is intended to detain a prisoner, the detainer shall be in the form No. 5, a copy of which, and all indorsements, is to be delivered with the process to the keeper of the gaol, who is to serve such copy on the defendant, or leave the same at his room. The declaration is to allege the prisoner to be in custody in the gaol, and the subsequent proceedings are to be as against prisoners on mesne process. (s. 7.)

Plaintiffs may declare and proceed according to the practice of the Court as on mesne process. (s. 4.)

14th. *Privilege*.—The act is not to subject any person to arrest, outlawry, or waiver, who by reason of any privilege, usage, or otherwise, may now by law be exempt; or extend to any cause removed by writ of *pone loquelam, accedus ad curiam, certiorari, recordari facius loquelam, habeas corpus*, or otherwise. (s. 14.)

The form of writs is not to be varied on account of any privilege of parliament or otherwise. (s. 1.)

15th. *Proceedings to bar the Statute of Limitations*.—No first writ shall be available to prevent the operation of any statute limiting the time for commencing actions, unless the defendant shall be arrested or served, or proceedings towards outlawry taken, or unless such writ, and every writ issued in continuation, be returned *non est inventus*, and entered of record within *one calendar month* after its expiration, and unless every writ in continuation be issued within *one calendar month* after the expiration of the preceding writ, and contain a memorandum of the date of the first writ and return. (s. 8.)

16th. *Fees and Costs*.—The Judges of the superior Courts, or any eight or more (of whom the Chief of each of the Courts shall be three), may by any rule or order make regulations as to the fees to be charged by the officers of the Court and the attorneys, and to alter the same, not exceeding the fees now received. (s. 25.)

The Judges may make rules touching the costs for omitting to apply for or refusing the admission of documents. (s. 17.)

The costs of preparing pleadings are to be the same as in the superior Courts. (s. 35.)

## NOTICE OF MOTIONS.—STAYING PROCEEDINGS.

With respect to staying proceedings during the pendency of a motion, it is important to remark that there is a difference in the practice of the Court of King's Bench, from that of the Common Pleas and Exchequer. This difference would perhaps be hardly worthy of remark, but for the decision of a very eminent Judge. In the cases of *Fortescue v. Jones*, 1 Dowl. Pra. Cas. p. 524, Mr. Justice Parke, in the King's Bench Practice Court, decided, that unless notice of a motion to set aside proceedings for irregularity was given to the opposite party, a rule *nisi* was no stay of proceedings. This, however, it appears, was contrary to the constant practice of the Court, and accordingly Mr. Justice Taunton, in a subsequent term, decided, that the rule *nisi* was a stay of proceedings, although no notice had been given to the opposite side. In conformity with this latter decision also was the opinion of Mr. Justice Patteson, in the case of *Stratton v. Regan*, 2 Dowl. Prac. Cas. 585. In the Court of King's Bench, therefore, it is not necessary to give notice of motion in order to obtain a stay of proceedings; and in many cases it may be advisable not to give such notice, since, if the opposite party appear and discharge the rule, in the first instance, neither will have any costs.

## PRACTICAL POINTS OF GENERAL INTEREST.

### No. LXIX.

#### REPUDIATION OF CONTRACT.

WHERE a vendee is fraudulently deceived in the purchase of any article, if he object at once to the completion of the contract, he may repu-

diate it; but if he chooses to deal with his purchase, he will be bound by it, and the discovery of a further fraud in the matter will not avail him. This principle is enforced in the following case:

*Assumpsit for money had and received. Plea, the general issue. On the trial, before Denman, C. J., at the sittings after last Hilary Term, at Guildhall, the plaintiff proved that, in consequence of an advertisement in the newspapers, he entered into a negotiation for the purchase of some shares in a supposed joint stock mining company. and, upon representations made to him by the agents of the defendants, became the purchaser of shares to a large amount. After the purchase was concluded, he discovered that the statements in the advertisement, and many of the representations made to him in the course of the negotiation, were fraudulent, and that the whole scheme was a deception. The real sellers of the shares were the defendants. The action was brought to recover back the money paid for the shares. On the cross-examination of the plaintiff's witnesses, it appeared that subsequently to the above transactions, the plaintiff formed a new company, by consolidating the shares originally purchased by him with some other property: and he sold shares in the new company, thereby realizing a considerable sum of money. Evidence was further given, on the part of the plaintiff, to shew that, at the time of the original purchase, an outlay of 35,000*l.* was represented to him to have been made by the supposed mining company in the purchase of property, which outlay, in fact, had not amounted to 5,000*l.*, and that this part of the fraud was not discovered by him till after he had disposed of the shares of the new company. The Lord Chief Justice nonsuited the plaintiff.*

On a motion to shew cause why the nonsuit should not be set aside; *Littledale, J.* said, it seems to me that this nonsuit was right. No doubt there was, at the first, a gross fraud on the plaintiff. But after he had learned that an imposition had been practised on him, he ought to have made his stand. Instead of doing so, he goes on dealing with the shares; and, in fact, disposes of some of them. Supposing him not to have had, at that time, so full a knowledge of the fraud as he afterwards obtained, he had given up his right of objection by dealing with the property after he had once discovered that he had been imposed upon.

*Parke, J.*—I am entirely of the same opinion. After the plaintiff, knowing of the fraud, had elected to treat the transaction as a contract, he had lost his right of rescinding it; and the fraud could do no more than entitle him to rescind. It is said, that another fraudulent representation was subsequently discovered. I cannot, however, perceive that the evidence goes far enough to shew that such a representation was, in fact, made.

*Patteson, J.*—No contract can arise out of a fraud; and an action brought upon a sup-

posed contract, which is shewn to have arisen from fraud, may be resisted. In this case the plaintiff has paid the money, and now demands it back, on the ground of the money having been paid on a void transaction. To entitle him to do so, he should, at the time of discovering the fraud, have elected to repudiate the whole transaction. Instead of doing so, he deals with that for which he now says that he never legally contracted. Long after this, as he alleges, he discovers a new incident in the fraud. This can only be considered as strengthening the evidence of the original fraud; and it cannot revive the right of repudiation which has been once waived.

*Denman, C. J.*—I acted upon the principle which has been so clearly put by the rest of the Court. There is no authority for saying, that a party must know all the incidents of a fraud before he deprives himself of the right of rescinding.

Rule refused.—*Campbell v. Fleming*, 1 Adol. and E 40.

## JUDICIAL IMPARTIALITY.—LORD ELDON.

It is a very tempting thing to a Judge, thirsting for popularity, to encourage applications which may afford opportunities of displaying a spirit of patronage and condescending greatness. The practice, however, is questionable, even if there were no judicial impropriety in it; for a Judge should devote himself to the duties of his office, and the *ex parte* statements which come before him "out of Court" can never be relied on. Besides all the perversions with which they are fraught, they needlessly occupy the time of the Judge in details which have undergone no professional pruning or revision, and are therefore equally bad in manner and matter. But besides all this, the reception of such papers is a direct breach of the great principle of *impartiality*. A Judge who has received and read such communications, and especially if he should have given any *opinion* or *advice* upon them, is naturally inclined to adhere to his first impression; and at all events, if he should decide in favor of the party who (to use a familiar phrase) has thus "ear-wigged" him, he is open to strong suspicion of partiality. We have heard that such things occurred no very long time ago; and by way of caution, we subjoin the opinion of Lord Eldon—backed by his practice—on such occasions.

His Lordship had been addressed in a

letter, bearing the post-mark of "Newcastle," Dec. 21, 1826; in which the writer endeavored to win the then Lord Chancellor's ear by such appeals as the following:

"Well knowing your benevolent disposition, and the great interest you take in forwarding the claims of the poor and indigent," \* \* \* "I most humbly solicit your Lordship's interest, in order that I may attain what is my legal right. I am in the most distressed circumstances;" \* \* \* "and looking up to your Lordship's high legal character, and considering your Lordship as the guardian of the distressed, I take this liberty," &c. [The circumstances of the case we forbear stating.]

The venerable Earl returned the letter, with the following memorandum in his own hand writing:

"The person to whom this is addressed being a *Judge* of the Court mentioned in it, cannot give *advice* to any persons respecting property, the litigation respecting which may come before himself as a *Judge*, to decide with impartiality, and without any information given previously by any party in such litigation. If advice is wanted, counsel must be applied to; and every gentleman at the bar will give a liberal consideration to what the party's pecuniary circumstances may require that attention should be given."

#### RENEWAL OF ATTORNEYS' CERTIFICATES.

We have been reminded of the grievance under which the profession labours, by the imposition of the annual tax of 12*l.* on their certificates. This is about the time when they must be renewed, and it is therefore seasonable to recal attention to the subject. The sum paid to Government by attorneys and solicitors amounts nearly to 80,000*l.* annually. It was imposed during the war, when taxes, however objectionable in principle, were submitted to by the loyalty of the profession; and the impost ought to have been reduced, if not removed, long ago.

We are aware that there may be reasons assigned for an annual register of persons in actual practice; but that object might be effected for a small fee of sufficient amount to pay the expense of the registry. No such

regulation however has been deemed necessary with respect to the Bar. Nor are the other professions subjected to such a poll-tax. It is therefore in this respect, as well as others, partial and unjust. It is also an unequal tax, because the same amount is paid by the solicitor who derives an income from his professional employment of two thousand a year, and he who acquires only two hundred. A graduated scale, however, would be liable to all the objections which attach to an income tax, and we are, therefore, for abolishing it altogether, or reducing it to some 10*s.* or 20*s.*, by way of annual registry.

It has been supposed, we believe, that it is useless to address the Legislature on the subject: first, because the Chancellor of the Exchequer cannot spare the money which is thus raised; and secondly, that all other classes will be relieved before the lawyers: it being supposed that they can well afford to be taxed, and that the money paid to them is exorbitant in amount, and consists almost entirely of profit.

We think these mistakes should be pointed out to the House of Commons by the members of the profession and their friends who are in Parliament; and it may be taken for granted that until the matter is properly brought forward, there will be no alteration. We believe it was materially owing to the speech of the late Lord Erskine, made at a meeting of one of the Law Societies, in which he pointed out with great force the iniquity of continuing the tax on legal proceedings, that it was abolished. The present tax, though not so palpable to the public, must ultimately be borne by them, and they would consequently be benefited by its removal; and justice would then be done to a profession which ought in this respect to stand on the same footing as others. We think also that the common law practitioners are peculiarly entitled to consideration, by the reductions which have from time to time taken place of late years in the fees and emoluments allowed to them, and by the changes which have effected all classes of the profession.

We trust, that in preparing petitions on this subject, some hints may be collected from these pages; and we shall gladly assist in promoting any measure by which the grievance may be removed.

## CIRCULAR OF THE POOR LAW COMMISSIONERS.

Office of the Poor Law Commissioners  
for England and Wales.  
London, 8th Nov. 1834.

*To the Overseers of the Poor.*

The Poor Law Commissioners for England and Wales have received information which leads them to believe that notwithstanding the directions conveyed to the Overseers in the circular letter of the 14th of September, the Poor Law Amendment Act is still imperfectly understood; and that the Overseers in many parishes, which have no Select Vestries or Boards of Guardians, are under misapprehension as to the duties which they are by the existing laws required to perform.

The Commissioners, therefore, think it necessary to inform you, that as Overseers you still remain responsible for the due relief of the poor; and that you may furnish such relief in any of the different ways in which, by law, you might have furnished it, before the passing of the Poor Law Amendment Act; bearing in mind always, the necessity of vigilance and strict economy in its distribution.

The Poor Law Amendment Act was passed, not for the purpose of abolishing the necessary relief to the indigent, but for preventing various illegal and injurious practices, which had, by degrees, grown up in the administration of such relief. The Commissioners will gradually introduce proper regulations for preventing these practices, which, although highly objectionable, cannot, altogether and immediately, be stopped.—In the mean time, the Commissioners wish to draw your attention to the following suggestions; many parishes having derived great advantage from adopting the measures which are here pointed out:—

1. With regard to able-bodied paupers, who are unable to procure employment, you should, if possible, set them to work; and, in all cases where circumstances permit its adoption, task-work should be preferred.

2. The allowance to be given to the pauper, in return for parish work, whether the same be day work or task work, should be considerably less than the ordinary wages paid for similar work to an independent labourer.

3. If it be found impracticable to set the able-bodied paupers to work, one half at least of the relief given to them should be in food, or in the other necessaries of life; and, if this rule be applicable to your parish, the Commissioners recommend you to consider whether arrangements cannot be made for carrying it into effect without delay.

4. If it is the practice in your parish to make an allowance to labourers in respect of the number of their children, you should not suddenly or altogether discontinue these allowances, but you should make them in kind rather than in money.

5. With respect to the paupers (if any) belonging to your parish, but resident elsewhere,

who have been accustomed to receive from your parish weekly or other payments—such payments, especially as regards aged and infirm persons, should not be hastily withdrawn; but the list of cases of this nature should be carefully revised, with the view to detect frauds and impositions.

6. If your parish possesses a workhouse, which is already in such a state as to admit of able-bodied paupers being lodged, maintained, and set to work therein, you may make the offer of relief within the house to any such pauper who shall apply for parochial aid; and such offer will exonerate you from the necessity of offering other relief.

The Commissioners wish you to observe, that the foregoing suggestions are for your information and assistance only, and are not to be mistaken for *Rules or Orders* issued by them, under the authority of the Poor Law Amendment Act.

By order of the Board,  
EDWIN CHADWICK, Secretary.

SELECTIONS  
FROM CORRESPONDENCE.

No. LXXXIII.

## ACKNOWLEDGMENT OF LEASE FOR A YEAR.

In answer to the letter of H. M., (8 L. O. 424,) relative to the acknowledgment of a lease for a year, I beg to submit that, although it is prudent to have the lease acknowledged by the wife, in cases where she has the freehold of the property intended to be conveyed; yet that such acknowledgment is not *absolutely requisite*, inasmuch as a lease made by husband and wife by deed, without the observance of the conditions required by the stat. of Hen. 8, is not void, but only voidable, and consequently will clothe the lessee with a sufficient possession to enable him to take a release.

Before the passing of the recent act, by which an acknowledgment is substituted for a fine or recovery, the usual mode of conveying freehold premises, held by husband and wife in right of the latter, was by lease and release, with a covenant in the release to levy a fine to the uses therein declared; but if since the passing of that statute, a lease for a year by husband and wife, without acknowledgment, be absolutely void, then, by parity of reasoning, the lease under the old system must have been void also, as the fine could not give to it any validity whatever.

I concur with H. M. in thinking the point one of great importance, as I doubt not that a large proportion of the leases for a year, executed since the passing of the act, have not been acknowledged by the wives of the lessors, although they have executed the same, and it is very desirable that the question should be fully discussed and set at rest.

Y. Z.

IMPARLANCE.

Sir,

On the subject of the decision of Mr. Justice Taunton, allow me to make two observations.

First, as a plaintiff cannot declare *de bene esse* on serviceable process since the Uniformity of Process Act, that statute, as construed by the learned Judge, will have the effect, in very many cases, of preventing a plaintiff getting what used to be called a Plea of the Term, and thereby occasion him very great delay and injury.

Secondly, The 3 & 4 W. 4, c. 67, s. 2, has these words: "And whereas by the existing law, and the practice of the said Courts of Common Law, actions may be brought, and issues proceed to trial and final judgment in vacation, notwithstanding the cause of action may have arisen subsequent to the then preceding term." Now, if the decision referred to be law, this preamble ought to have run,— "Whereas issues may proceed to trial and final judgment in vacation, if the defendants think fit to let them, by waiving their right to imparl to the next term by pleading."

J. C.

[In all these cases a material question arises, namely, whether the writ was returnable in term or vacation. Ed.]

SUPERIOR COURTS.

Vice Chancellor's Court.

PRACTICE.—INFORMATION.—RELATOR.

*Upon motion to take an information, in respect of a charity, off the file, for the insufficiency of the relator to answer costs; and to charge the solicitor with costs, for filing the information without authority; and for obtaining the Attorney General's signature without having ascertained the sufficiency of the relator; this Court, inclining to grant the motion, directed an issue to inquire into the facts.*

This was a motion to take an information off the file, for the insufficiency of the relator to answer for the costs, and to compel the solicitor to pay the costs of the motion, and all other costs hitherto incurred on the part of the defendants, for having used the relator's name without authority, and having obtained the Attorney General's signature to the information irregularly, as was alleged.

Sir Edward Sugden and Mr. Bethell, in support of the motion. The ground of the motion was first, that the information had been filed without the knowledge of the relator. The object of the information was to obtain a reference to the Master, for ascheme to carry into effect a bequest made to the Skinners' Company in 1592, by a gentleman named Dixie, for the benefit of the poor freemen of the company. It appearing that the relator in the present

information, was not a freeman of the Skinners' Company, though a freemen of the city of London, and moreover that he was a poor man, an order for security of costs had been obtained by the defendants, when two persons were named as sureties, who were now objected to also on the ground of insufficiency. The relator himself has, since the information was filed, disavowed having authorized the filing of it in his name, and said the step had been taken by the solicitor in consequence of a casual conversation between him, (the relator) and another person on the subject. But whether the solicitor had or not this relator's authority, he was still amenable to the censure of the Court, for presenting the signature of the Attorney General without having ascertained the sufficiency of the relator. Sir Edward Sugden, in commenting on the affidavits read in support of this motion, contended that it was necessary a stop should be put to the filing of informations under such circumstances, though he admitted that every facility should be afforded for the investigation of the manner in which charitable bequests were appropriated by corporations. No one, however, would, he conceived, contend that it was right that companies should be attacked, as appeared to be the case in the present instance, merely to put money into the pockets of solicitors. It was evident the Attorney General had in this instance been grossly imposed upon, and that the conduct of the solicitor who had filed the information was highly reprehensible.

The Vice Chancellor asked whether the Attorney General was represented in Court by Counsel?

Mr. Wray said that he was instructed to appear, and to declare in the name of the Attorney General that he was quite satisfied he had been imposed upon as to the sufficiency of the relator, but that he would submit to act in the case as the Court might direct.

Mr. Knight and Mr. Cooper opposed the motion. The question of the sufficiency of the relator, was not exactly the question before the Court. That point had been disposed of by the motion for the security of costs, when the plaintiff immediately consented to that course, and had produced two persons who were, it was true, objected to by the defendants, but without reason assigned. The disavowal of authority on the part of the relator had been made in consequence of his having been threatened with serious loss, by third parties. He had not formally, however, by affidavit recalled the authority he had originally given to the solicitor for the information, through the medium of a mutual friend; and even if he had withdrawn his consent, that would be no reason for fixing the costs on the solicitor, who acted in the first instance in his name. In one of the affidavits filed on behalf of the solicitor in opposition to this motion, it is positively stated that upwards of 200,000*l.* had been restored to charitable purposes, by means of informations filed in Chancery, by one firm of solicitors alone. The public ought to be extremely obliged to those individuals who

had the spirit to come forward in opposition to wealthy companies, for the purpose of compelling them to refund the enormous sums which the piety or charity of our ancestors had entrusted to them for benevolent objects, and to divert them again into the stream from which they had been so long withdrawn.

His Honor the *Vice Chancellor*, after looking into the affidavits and the record, said he would state how the matter struck him. The question was certainly one of high importance, not only involving as it did the characters of different parties, but the alleged fact of imposition having been practised on the Attorney General, when his sanction was obtained to the information. The Attorney General, it was true, might file an information without a relator at all,<sup>a</sup> but when a relator was proposed, it was right that he should be in substance a proper person, so as to answer for the costs to defendants.<sup>b</sup> It was curious, however, that in the present case the engrossment of the certificate originally contained the names of two relators; but those names had been struck out, and that of the present relator introduced by interlineation. On the record, too, signed by the Attorney General, the name of the present relator was introduced on a blank, evidently occasioned by an erasure, and a line was drawn through the remaining space. There was under these circumstances, he thought, ground enough to suspect that the sufficiency of the existing relator had never in fact been certified by the Attorney General. The circumstance deserved inquiry, and he should take care to have it notified to the Attorney General of the present day,<sup>c</sup> in order that the responsibility contemplated by the law, might not be defeated. With regard to the question whether authority was or was not given by the relator, he thought the affirmative might be true; but still it was curious that the solicitor who had filed the information, had never made inquiry into that fact after the communication made to him by his friend. Every loose expression that fell from a man in conversation, was not to be taken for the deliberate determination of his mind, and in the present state of the evidence, he did not feel at all satisfied that authority to use the relator's name had been given. He, therefore, thought it would be best for him to direct an issue for the purpose of ascertaining that fact. All the parties would then be examined, and a jury would decide on their evidence, whether the information conveyed to the solicitor was sufficient to authorize him to file the information in its present shape. His Honor directed an issue to be tried in the Court of King's Bench, the relator to be the plaintiff in it.

*Attorney General v. The Skinners' Company.*  
Sittings in Lincoln's Inn Hall after Trinity Term, 1834.

### Rolls Court.

#### WILL.—CONSTRUCTION.

*This Court will presume that the construction given by the Court a century ago to a bequest in a will was right, and will not give it a new and different construction, so as to alter the destination of the bequest from the class which was partaking of the benefits of it all that time under the decree of the Court.*

This suit was originally instituted more than a century ago, for the purpose of carrying into effect the trusts of the will of Joseph Gaspar Bernal, a Dutch Jew merchant. The will, executed at Amsterdam, and dated in the year 1695, contained among other bequests, a disposition in favour of "such of the relations of the testator's father, or of his ancestors, as should need the same, also their heirs or near relations;" also their descendants or near relations." This bequest had been treated by the Court of Chancery as if it were in the nature of a charity, and a reference had been directed to the Master in the year 1735, to inquire who were the proper objects of the charity, and to settle a scheme for the distribution of the fund. In pursuance of the Master's report under that reference, the fund had been distributed for many years among the male and female descendants of the testator; but in the present year (1834) a petition was presented by the male descendants, claiming to be exclusively entitled to the fund, and that petition was supported by the affidavit of a Jewish Rabbi of eminence, who deposed that according to the Mosaic law the male descendants were alone entitled to the benefit of the bequest in question, and that with reference to that law, and the true meaning of the testator, the female descendants could not be included, unless they were expressly named by the testator. Upon that petition a reference was directed to the Master, to inquire into the present state of the charity, and to approve of a scheme for the future management and application of the funds.

Mr. Bickersteth, Mr. Pemberton, Mr. Wakefield, and Mr. Sidebotham, appeared for the several parties interested in the petition, on its now coming on for further directions.

The Master of the Rolls was of opinion that after the funds had been distributed under the direction of the Court for above a century among the male and female descendants of the testator, what the Court had originally done, must now be presumed to have been rightly done, and no new and different construction could be put upon the will. The matter must be referred back to the Master to prosecute the inquiry, regard being had to the mode in which the fund had been distributed; and to inquire whether the persons among

<sup>a</sup> See act 59 G. 3, c. 91; *Attorney General v. Earl of Ashburnham*; 1 Sim. & Stu. 394; and *In re Bodford Charity*, 2 Swanst. 520.

<sup>b</sup> Mitf. Plead. 18, 79.

<sup>c</sup> Sir William Horne, had lately resigned, and Sir John Campbell been appointed Attorney General.

whom it was now distributed continued to be proper objects of the charity.

*Bernal v. Bernal*, at the Rolls, Chancery-lane, June 25, 1834.

### King's Bench.

[Before the four Judges.]

MISDIRECTION.—PLEADING.—ISSUE.—TRESPASS.

*In an action for entering the plaintiff's close, if issue is taken on the ownership of the close, the identity of it may be shown by the trespass alleged, as well as the name of it.*

This was an application for a rule to shew cause why the verdict should not be set aside on the ground of misdirection on the part of the learned Judge who tried the cause. It was an action of trespass for breaking and entering the plaintiff's close, called *Harding*, and allowing certain pigs belonging to the defendant to trample down the grass and herbage therein growing. The defendant pleaded that the close called *Harding* was his. The plaintiff in his replication traversed the plea. At the trial it was proved that there were more closes than one belonging to the plaintiff called *Harding*. Lord Denman, C. J., who tried the cause, left it for the Jury to say whether the close called *Harding*, in which the trespass by the pigs had been committed, was in the possession of the plaintiff or the defendant. The Jury found a verdict for the plaintiff, damages 40s. The direction of the Lord Chief Justice, it was contended, was incorrect, as the issue raised by the pleadings was merely as to the ownership of the close called *Harding*. The fact of the evidence showing that there were more than one close named *Harding*, could not alter the state of the pleadings, so as to authorise the Judge to leave for the consideration of the Jury, an issue which the parties themselves had not thought proper to raise.

*Taunton, J.*—The replication clearly raised the issue as to the close in which the trespass complained of was alleged to have been committed.

*Patterson, J.*—The only question raised on the pleadings clearly was, whether the trespass complained of was committed on the plaintiff's close. As it appeared that there were several closes named *Harding*, it became necessary to mention the fact of the trespass by the pigs, in order to identify the close in question as the one with regard to which litigation existed. By calling the close *Harding*, no identity was shewn, because there were several closes of the same name. Now, suppose no name at all had been given by the plaintiff to the *locus in quo*, and the defendant had pleaded that he was seised of it, then, it would have been clear that the sole issue raised was with respect to the close in which the pigs had trespassed. It appears to me, therefore, that the mode in which the Chief Justice left the case to the Jury was correct.

Lord Denman, C. J., and Williams, J., concurred.

Rule refused.—*Bond v. Downton*, M. T. 1834. K. B. F. J.

### Common Pleas.

EXECUTOR'S AFFIDAVIT.—PERJURY.—RE-SWEARING.

*An executor plaintiff, who had lost a verdict, applied to the Court under the 31st section of the 3 & 4 W. 4, c. 42, for a rule calling upon the defendant to shew cause "why judgment should not be entered up without costs; or, if defendant would not consent thereto, why the verdict should not be set aside and a new trial had." The defendant not consenting to the first part of the rule, the Court would not adjudicate upon the point involved in it. The plaintiff took out a new rule, calling upon the defendant to shew cause "why the judgment should not be entered up without costs."*

*Held, that the affidavits made by the defendant to oppose the first rule could not be made use of, without being re-sworn, to oppose the second.*

In this case an action was brought by an executor in his representative character, on a bill of exchange for 20l., indorsed to the testator, to discount it. Before the bill came to maturity, the testator died. The defendant obtained a verdict. The writ was sued out before the 3 and 4 W. 4. c. 42 came in force, but the verdict was found afterwards. The words of sec. 31 are, "that in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought, or a Judge of the said superior Courts, shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited, or a verdict passing against the plaintiff, and in all other cases in which he would be liable, if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner." Under this section the plaintiff obtained a rule calling upon the defendant to shew cause why judgment should not be entered up without costs, or if defendant would not consent thereto, why the verdict should not be set aside, and a new trial had. The defendant would not consent to judgment being entered up without costs. The Court then thought, that by the mode in which the rule was framed, it had no power to enter upon that question. A rule was then obtained for entering up judgment without costs.

On shewing cause, it was sought to read affidavits filed by the defendant on opposing the former rule. An objection was taken to this course, on the ground that perjury could not be assigned on them.

*Tindall, C. J.*—The first rule, by its form, embraced two matters, viz. the judgment for the defendant without costs, and a new trial.



but by the mode of stating the alternative, if the defendant refuses to consent to the first proposition, we have no jurisdiction over it. I feel a doubt, therefore, whether the defendant's affidavits in support of that rule could have perjury assigned upon them, as to matters relating to a new rule different from that which was before the Court when they were sworn. The affidavits had better be re-sworn. The rest of the Court concurred.

*Quelly v. Boucher*, M. T. 1834. C. P.

### Exchequer of Pleas.

#### PLEADING.—FRIVOLOUS DEMURRER.

*If a motion is made to set aside a frivolous demurrer, a rule will be granted for that purpose, if cause is not shewn on a particular day.*

Action against the drawer of a bill of exchange, the declaration in the common form. Demurrer was put in stating several causes of demurrer, for which there clearly was no foundation. A note was inserted in the margin, stating the grounds of demurrer assigned.

It was now moved that the demurrer might be set aside as frivolous, pursuant to the rules of H. T. 4 W. 4.

*Per Curiam*.—Take a rule to set aside the demurrer as irregular, unless cause be shewn on Thursday next.

Rule accordingly.—*Kinnear v. Kean*, M. T. 1834. Excheq.

#### PARTNERS.—SEPARATE DEFENCES.

*It is regular for several defendants who are sued as partners to appear and defend by different counsel, who may cross-examine, and address the jury separately, although one of the grounds of defence is, that they are not partners.*

On moving for a new trial in this case, one ground of the motion was, that the defendants, who were sued as partners, and set up as a ground of defence that they were not partners, had appeared by separate counsel, who had instituted separate cross-examinations, and made separate speeches to the jury.

*Parke, B.*—There is a *nisi prius* decision, I am aware, that defendants under such circumstances cannot defend separately; but I never could understand the justice of it. In the present case I think the proper course has been pursued.

*Alderson, B. and Gurney, B.*, concurred.

Rule refused.—*Ridgway v. Phillips*, M. T. 1834. Excheq.

### King's Bench Practice Court.

#### IMPARLANCE.—VACATION.

*Since the passing of the Uniformity of Process Act, imparlances no longer exist.*

Judgment had been signed in this case. A rule was obtained to set aside that judgment, on the ground of irregularity. The irregu-

larly complained of was, that judgment had been signed too soon. The defendant, it appeared, was served with the writ on the 4th of August, to which he appeared. The plaintiff, on the 24th of October, delivered his declaration, indorsed to plead in four days. Judgment was, in consequence of the defendant not pleading, signed on the 29th.

On the part of the defendant it was contended, that he was entitled to an imparlance until Michaelmas Term, and that the plaintiff had signed judgment too soon.

On the other side, however, it was submitted that the defendant could not be entitled to an imparlance, as the 2 W. 4, c. 39, s. 11, provides that "all necessary proceedings to judgment and execution, may, except as hereinafter provided, be had thereon without delay at the expiration of eight days from the service or execution thereof, on whatever day the last of such eight days may happen to fall, whether in term or vacation."

The present case did not come within any of the provisos of s. 11 of the Uniformity of Process Act, and was therefore subject to the operation of the general provision. Imparlances were therefore by this provision virtually abolished, and the defendant consequently could not be entitled to an imparlance.

In support of this rule, it appeared that the rule *nisi* was originally obtained on the authority of the case of *Freun v. Chaplin*, 2 Dowl. Prac. Cas. 523, where it was decided by Mr. Justice Taunton, that, notwithstanding the provisions contained in s. 11 of the Uniformity of Process Act, imparlances were not yet abolished; but it was admitted that a decision had, however, lately been pronounced in the Court of Exchequer, on reviewing the judgment in the cited case, that imparlances were now altogether abolished.

*Littledale, J.*, on reading sec. 11 of the Uniformity of Process Act,—I should have formed the same opinion which, it appears, the Court of Exchequer has pronounced. The present rule must therefore be discharged; but, this application having been made on the authority of a decision of a learned Judge, it must be discharged without costs.

Rule discharged, without costs.—*Wigley v. Tumlin*, M. T. 1834. K. B. P. C.

#### DEMURRER.—PLEADING.—PAPER BOOKS.

*The Court will not set a demurrer aside as frivolous, if it appears that the ground stated in the margin is a good one.*

This was an application to set aside a demurrer, under 2 Reg. Gen. H. T. 4 W. 4, on

\* It is fortunate that the Courts have now decided absolutely, that there is no such thing in existence as an imparlance. If they had sought to introduce the old consideration which existed under the previous practice, as to whether the plaintiff had proceeded with due celerity, great difficulty would still exist on the subject of imparlances.

the ground that the statement in the margin was frivolous. The terms of the rule are, "in the margin of every demurrer, before it is signed by counsel, some matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the Court or a Judge, and leave may be given to sign judgment as for a want of a plea." This was an action of *assumpsit*, by two plaintiffs. The allegation in the declaration was, that the defendant was indebted to "the plaintiff," and not to "the plaintiffs." This was the ground of demurrer marked in the margin.

*Littledale, J.* This, it seems to me, is a good ground of demurrer, and therefore, that the statement of it in the margin is not frivolous.

Rule refused.—*Tyndall and another v. Ullithorne*. M. T. 1834. K. B. P. C.

#### COSTS OF JUSTIFYING BAIL.—3 REG. GEN. T. T. 1 W. 4.

*If bail justify, under 3 Reg. Gen. T. T. 1 W. 4, application for the costs of justifying must be made at the time of justification.*

This was an application for the costs of justifying bail, who had complied with the provisions of 3 Reg. Gen. T. T. 1 W. 4. The words of the rule are, "that if the notice of bail shall be accompanied by an affidavit of each of the bail, according to the form hereunto subjoined; and if the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification." The bail having been allowed the defendant was, as a matter of course, entitled to the costs of justification. Application for those costs was not made, however, at the time of justifying, and the rule for the allowance was drawn up without noticing them. The object of the present application therefore is, that although it is some days since the bail justified, and no application at the time was made for the costs, the Court will now grant them.

*Patteson, J.* was of opinion, that from the language of the subsequent part of the rule, the defendant is entitled to his costs of justification as a matter of course. For the rule proceeds, that "if such bail are rejected the defendant shall pay the costs of opposition, unless the Court, or a judge thereof, shall otherwise order." These words as to the direction of the judge, it appeared to him, referred to both states of facts, whether the bail justified or are rejected. But I understand on referring to the officers of this Court, and an intimation by the officers of the Common Pleas and Exchequer, that the practice has hitherto been for application to be made for the costs at the time of justifying. No application having been made at the time for those costs, I do not see how I can grant them now; for the opposite party may have appeared for the purpose of resisting an application for costs; and hearing

none, and relying on the practice generally adopted, may have gone away, and therefore I could not with propriety entertain such an application in their absence.

Motion refused.—*Frean v. Best*, T. T. 1834. K. B. P. C.

#### UNDER SHERIFF.—COSTS.—CONTUMACY.

*The under-sheriff is bound to produce his notes of a trial of an issue before him without a formal order, and if he does not, he will be compelled to pay the expenses consequent on neglect.*

This was a motion for a rule *nisi*, requiring the sheriff of Warwickshire to shew cause why he should not pay the costs consequent to the plaintiff, on the refusal by the under sheriff to produce to the Court his notes taken on the trial of an issue before him. It appeared, that a motion had been made to the Court above, with respect to the trial of the issue, and it was intimated to the under sheriff, that the Court was desirous of having his notes taken at the time of the trial. He, however, refused to produce these notes, stating that he would not produce them until an official order of the Court was made upon him for that purpose. In consequence of such an order being afterwards obtained, the notes were ultimately produced; but considerable expense had been incurred by the plaintiff before this took place.

*Patteson, J.*, granted a rule. Rule *nisi* accordingly. No cause being shewn against this rule, it was made absolute on the last day of term.

*Metcalf v. Parry*, T. T. 1834. K. B. P. C.

#### SETTING ASIDE PROCEEDINGS.—IDENTITY.

*If proceedings are sought to be set aside for want of service of process, it must appear that the person making the application is the defendant in the cause.*

Cause was shewn against a rule *nisi* which had been obtained in this case, for the purpose of setting aside the appearance entered by the plaintiff for the defendant, the declaration, and all subsequent proceedings, on the ground that the defendant had not been served with a writ. The affidavit on which the present application was founded was objected to, as it appeared from it that the person making it was a stranger to the proceeding. The person who made the affidavit described himself as "George Smallwood of Hammersmith," but did not state himself to be the defendant in this action. The affidavit then stated that the said George Smallwood had never been served with any process. What occasion was there for him to come to the Court at all, if he was not defendant in the action.

In support of the rule, it was contended that it was not necessary it should appear in the affidavit, that he was the defendant in the action. It was important indeed that he should not describe himself as defendant, as that would be the means of identifying him with the

present proceeding. The ground of his coming to the Court was, that he knew nothing about the claim set up by the plaintiff.

*Patteson, J.*, thought there was no reason for the person making the affidavit coming here to set aside the proceedings, as it does not appear that he is the defendant in the cause. For anything that appears, it might be some one else who bore the same name as the defendant. The present rule must therefore be discharged, but without costs.

Rule discharged without costs.—*Johnson v. Smallwood, T. T. 1834. K. B. P. C.*

MIDDLESEX COURT OF REQUESTS ACT.—  
FORMING AFFIDAVIT.

*It must appear in the affidavit in support of an application for double costs under the Middlesex Court of Requests Act, that the defendant is liable to be summoned to that Court.*

Cause was shewn against a rule nisi which had been obtained in this case under the 23 G. 2, c. 33, § 19, (the Middlesex County Court Act), for entering a suggestion to grant the defendant double costs, the plaintiff having recovered a sum less than 40s., viz. 9s. It was contended as a preliminary objection, that the defendant by his affidavit had not brought himself within the meaning of the act, and therefore was not entitled to receive his double costs. The words of the act were, "that in case any action of debt or action upon assumpsit shall be commenced and prosecuted in any of His Majesty's courts of record at Westminster, and the defendant or defendants at the time of such action brought, shall live and reside in the said county of Middlesex, and be liable to be summoned to the said county court, &c." In order therefore to entitle the defendant to avail himself of this act, it must appear by the affidavit, that he is liable to be summoned to the county court of Middlesex. The affidavit, however, on which this rule had been obtained merely stated, that the defendant was resident in the county of Middlesex, without going on to state that he was liable to be summoned to the county court. Not having brought himself within the meaning of the words of the act of parliament, he was not entitled to avail himself of it.

In support of the rule, it was submitted that the affidavit did sufficiently shew that the defendant was liable to be summoned to the county court of Middlesex.

*Patteson, J.*, was of opinion that it did not sufficiently appear by the affidavit that the defendant was liable to be summoned; unless it does so appear the defendant cannot avail himself of this act. The present rule must, therefore, be discharged, with costs.

Rule discharged, with costs.—*Fusell v. Godfrey, T. T. 1834. K. B. P. C.*

EXCHEQUER OF PLEAS SITTINGS.

On Monday, November 24th, the Court will take only the *Special Paper* and *Motions*.

NOTICE TO SOLICITORS IN  
CHANCERY.

The solicitors in every appeal or motion that may stand over for the Lord Chancellor's judgment, are requested, immediately on the conclusion of the argument, and before leaving Court, to interchange and hand over a complete set of the papers for his Lordship's use.

ANSWERS TO QUERIES.

Law of Attorneys.

SIGNED BILL. VOL. 8. P. 512.

I know of no case directly in point to which I could refer "A Young Student;" but he would do well to turn to p. 325—329 of Tidd's 9th edition of his Practice. Mr. T. states that "it has been made a question, whether an attorney may recover for charges or disbursements not taxable, when part of his demand is for business done in Court; and the distinction that has been taken is, that he may, when he has delivered no bill at all. Peake's Cases Ni Pri. 1st ed. 102; 2 Bos. & P. 345; 11 East, 285. But see 3 Esp. 149; 1 Camp. 437." If therefore the attorney has not already delivered his bill, he may recover the amount of the non-taxable items, without the month's prior delivery required by the statute. And if he has delivered his bill, including the taxable items, but has given notice to his client of his intention to abandon such taxable items, I submit that he places himself in the same situation as if he had delivered the bill without them; and that therefore he would be entitled to recover in an action commenced before the expiration of a month from the time of delivery. J. M. C.

Practice.

SUPERSEDEAS. P. 16.

If a defendant be superseded or supersedeable, for want of proceedings before judgment, the plaintiff may take him in execution at any time after judgment. 1 Durn. & E. 591; 7 East, 332. But if defendant be superseded for want of being charged in execution, the plaintiff can only bring an action of debt upon the judgment, but he cannot arrest defendant; Barnes, 376; 7 East, 332; Cowp. 72; though he may be taken in execution on a judgment in the second action. 2 Bla. R. 982.

M. I. N.

**COMMON LAW.**

**BAIL BOND.** VOL. 8, P. 464.

I do not agree with your correspondent J. S. in the latter part of his answer (vol. 8, p. 511) to this query, wherein he states that the plaintiff *cannot proceed upon the assignment pending a rule to return the writ*. I know of no authority whatever to justify J. S. in his opinion. With respect to the Rule referred to by J. S., 23 H. T. 2 W. 4, that rule is solely confined to proceedings on the bail bond *pending a rule to bring in the body*, and does not in any way allude to proceedings pending the rule to return the writ.

T. B.

**Law of Landlord and Tenant.**

**NOTICE TO QUIT.** P. 16, *ante*.

I beg to refer "A Constant Reader," to the cases of *Doe d. Hind v. Vince*, 2 Camp. 256, S. P., and *Doe v. Brooken*, mentioned in 2 Camp. 257, n.; where it was held, that if a tenant from year to year hold from old Michaelmas, a notice to quit at Michaelmas generally is good.

J. M. C.

**NOTICE TO QUIT LODGINGS.** P. 16, *ante*.

R. C. B. will see, by reference to Woodfall's Landlord and Tenant, by Harrison, p. 264, that in the absence of any special agreement to a different effect, he is bound to give six months' notice to quit, expiring at Michaelmas. Where the rent is reserved quarterly, it does not dispense with the regular half year's notice to quit required by law. *Spirlen v. Newman*, 1 Esp. 266.

J. M. C.

**ARREARS OF RENT.** VOL. 8, P. 480.

It appears quite clear, from the 42d section of the 3 & 4 W. 4. c. 27, and from the 3d sect. of the 3 & 4 W. 4. c. 42, that *D.* could in no way recover more than six years arrears of rent. The former sections of these statutes limits the right of bringing an action to twenty years; the latter, the amount of rent which may be recovered, viz. six years' arrears. Thus, although I may bring my action at any time within twenty years, yet it will not be competent to me to recover more than the amount of six years' rent. But I conceive a question might arise, whether or not *D.* would be entitled to recover any rent whatever. It seems that no rent has been paid for *18/9* years, neither has any acknowledgment been made in writing, as directed by the act: would not this altogether bar *D.*'s right?

A. Z.

**QUERIES.**

**Law of Attorneys.**

**INSOLVENT.—SOLICITOR'S COSTS.**

The incumbent of two livings being embarrassed in his circumstances, applied to a soli-

citor to effect an arrangement with his creditors, who so far succeeded as to induce a large proportion of them to agree that the whole emoluments of the livings should be assigned to trustees for the benefit of the creditors, reserving to himself the salary of a curate only of one of the livings. A deed was accordingly executed, dated 6th March, 1832, by several creditors. The trusts were to provide for the costs, charges, and expenses of the deed, and otherwise attending the arrangement, then to distribute the proceeds among the creditors until the debts were fully paid, and to render the surplus to the incumbent. In November, 1833, he was arrested for a large sum by one of the creditors who refused to execute it, and obtained his discharge by the Insolvent Debtors' Court. In his schedule he inserted the solicitor's name as a creditor for 50*l.* and upwards, the costs of the arrangement and deed. The trustees have doubts whether he is entitled to receive his bill according to the trusts of the deed, or to come in with the other creditors under the insolvency. Is the solicitor entitled to his whole debt under the security of the trust deed?

A CONSTANT READER.

**Law of Landlord and Tenant.**

**ADVERSE POSSESSION.**

Does the mere non-payment of rent for upwards of thirty years, by a person who has been in the actual possession of a farm during that period, constitute an *adverse* possession against the parties really entitled to the property, supposing them not to have been under any disability? See the 15th sec. of the Limitation of Actions Act.

C. E.

**ADVERSE POSSESSION.**

*A.*, about twenty-six years ago, let a small piece of waste ground (parcel of his estate) to *B.*, as tenant from year to year. *B.* has continued in possession ever since, but has never paid any rent, or otherwise acknowledged *A.*'s title. About eleven years ago *A.* granted a lease, comprising *inter alia* the piece of ground in question, but the lessee never entered upon this piece, although he regularly paid rent for it to *A.* The lease expired about a year ago. Was the possession of *B.* adverse to *A.*'s title during the continuance of the lease; and can *A.* now recover in ejectment?

J. W.

**Law of Property and Contingencies.**

**LEGATEE'S PRESUMED DEATH.**

*A.*, by his will, bequeathed to his wife, during her life, the interest of 1000*l.* stock in the funds, and at her decease the principal to be paid to *B.*, his nephew. In the year 1808, *B.* entered into the navy, and the ship was paid off in 1810, on which he was supposed to have entered into the American service. No tidings has since been heard of him. Advertisements have been inserted in the American

and other papers, but he cannot be found. The Americans kept no registry of the seamen in their service. The wife *A.* died in the year 1824, and the 1000*l.* stock is still standing in the funds, with the interest due thereon. *B.* was not married in 1810. Might the death of *B.* be now presumed, or is there any mode by which the stock in question can be transferred to the legal representatives of *B.*, or by which they could receive the interest thereof.

STUDENS.

## ACKNOWLEDGMENT IN LIEU OF FINE.

A feme sole advances money on the security of property mortgaged to her in fee. She afterwards marries, and no settlement is made on the marriage. It is scarcely necessary to observe that the husband becomes absolutely entitled to the mortgage money, while the wife is merely a trustee of the legal estate in fee. She and her husband wish to transfer the mortgage. Can they convey the legal estate by lease and release only, or is an acknowledgment necessary, under the 3 & 4 W. 4, c. 74?

STUDENS.

## TITLE.—CONDITIONS OF SALE.

*A.*, the lessee of an estate, purchases the fee of the same in the year 1812. The title was not a good marketable title, but a good one to hold by; the amount of the purchase money was therefore reduced considerably. The last conveyance deed which can be produced is the deed of 1812. *A.* has had unmolested possession of the property upwards of twenty years. Can *A.* give a marketable title to a purchaser? or should he have a special clause in the conditions of sale? If so, to what effect?

B. C.

## Common Law.

## WIFE'S CHOSE EN ACTION.

*Hyden v. Williamson*, 3 P. W. 132, and *Jewson v. Moulson*, 2 Atk. 417, are authorities that a contingent interest, or a possibility, will pass to the assignees; and *Mules v. Williams*, 1 P. W. 249, shews that debts and other choses en action belonging to the wife, will also pass to them, and that they are recoverable in their own name. Whether she became entitled before or after the marriage is immaterial.

X. Y.

## DISHONORED BILL.—NOTICE.

A bill drawn by *A.*, accepted by *B.*, by *A.* indorsed to *C.*, and by *C.* indorsed over to subsequent indorsers, and finally to *D.* The bill was dishonored. *D.* gave notice to *A.* (the drawer), but to none of the indorsers. An intermediate indorser has since paid the bill to *D.* Can the intermediate indorser now sue the drawer for the amount? *Vide Byles on Bills*, 163, and Bayley, 209.

H. S. I.

## THE EDITOR'S LETTER BOX.

The changes which have taken place in the Court of Chancery and the Law Officers of the Crown, will render it necessary to reprint part of *The Legal Almanack and Remembrancer*, and the publication will be consequently somewhat delayed.

It will consist of Lists of the Judges and Officers of all the Courts at Westminster, and such of the Local Courts as are interesting to the Profession in general.—The Officers of both Houses of Parliament.—A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices; the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c.—The hours of attendance at the Common Law, Equity, and other Offices, carefully ascertained.—The Terms and Returns of Writs.—Barristers, with the date of their call, and Regulations of the Inns of Court.—Members of the Incorporated Law Society, with the regulations for admission.—The Circuits.—The Quarter Sessions; and various other Tables of professional utility.

Information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers, will be carried down to the latest time.

The note (e) at page 22, which a correspondent considers to be equivocal, was intended to intimate that Mr. Justice *Littledale's* view was similar to our own, and not to Mr. Justice *Taunton's*, on the subject of Imparances. We refer to a case on that point in the present Number.

We thank G. B. for his communication, of which we shall avail ourselves.

The letters of H. H.; and J. B. N. shall have our early attention.

The Fourth Part of the *Digest* is now published, and completes the Digest of all Reported Cases for 1834. This volume, with the *Commentaries on the New Statutes*, passed in the last Session of Parliament, effecting alterations in the Law, may be bound together, and our Subscribers will then have, in a convenient form and at a moderate price, all the Statutes and Decisions for the year.

The further article, which we intended to insert, on the subject of the proposed removal of the Courts at Westminster, is deferred, on account of the absorbing interest which attaches to the great legal as well as other changes.

The Queries and Answers of W. W.; "Spea;" S. D.; and J. S. have been received.

Our large arrear of correspondence and other communications will render it necessary to publish a Double Number next month.

A letter has been left with the publishers, in answer to the offer of a Correspondent.

# The Legal Observer.

Vol. IX. SATURDAY, NOVEMBER 29, 1834. No. CCXXXIX.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE NEW LORD CHANCELLOR.

LORD LYNDHURST was sworn into the office of Lord Chancellor on this day week, the 22d of this month; his predecessor, as we noticed last week, having been in office just four years. It is to be noticed that the new Lord Chancellor was unaccompanied by the great officers of state, whose presence is usual on such occasions; but this is accounted for by the present state of the Ministry. He was however attended by the Master of the Rolls, the Vice Chancellor, the Masters in Chancery, and most of the King's counsel and barristers who practise in the Equity Courts. The Lord Chancellor has at present a double duty to perform, not having yet resigned the Chief Baronship of the Exchequer. When he is able to give his undivided attention to the duties of his new office, we have little doubt of the result. He takes the Seal under considerable advantages. Since he last presided in the Court of Chancery, its jurisdiction in bankruptcy has been entirely removed, except on appeal. There is also but little arrear of business. Besides this, it has been the good fortune of the noble lord, during his four years secession from the office of Lord Chancellor, whilst he has been more or less employed in equity business, to have had his full share of common law duties; and as he can never know equity who is not well versed in common law, he comes well prepared for the discharge of his important duties. Indeed, we only hesitate as to one point; we have some doubt whether, with his satisfactory mode of disposing of his business, he will be able, with all the other numerous demands on his time, to keep

down the arrear in his Court to its present level. He may easily *get through* the matters before him, but whether he will be able to *hear* them is not so certain, particularly as his being a favourite judge will draw increased business to his Court. With this qualification, which, as it will be seen, applies rather to the necessary state of things than to the man, we hail his elevation to the woolsock, and are well satisfied that it is satisfactory to the profession.

We have now some hope that those principles which we have so often endeavoured to enforce will be acted on. We have never been slow to give our assistance to moderate and judicious reforms in the law; but if we consider for a moment how much has recently been done, if we be wise we shall pause in our progress. Every part of our laws has undergone very considerable modifications. The Courts of Equity, the Courts of Common Law, the Law of Real Property, have all been greatly altered, as we think, in most respects for the better; but we merely ask that time may show us the effect of the changes already made before we proceed further. The danger of tampering with the laws of a country has been pointed out by all sensible men who have considered the subject. Here then, we would say, let us pause awhile, and let us be satisfied for a season. The learned commissioners appointed to consider and amend our laws are now at the close of their labours; the greater part of their recommendations have been already carried into effect, and most of the others are embodied into bills now before Parliament. This, therefore, would seem to be a proper time to make a *rest* in the great account.

In making these observations, however,

we wish not to be misunderstood. We are perfectly willing to go on in the safe course of reform; to apply simple remedies to admitted evils: all we mean to deprecate is any great or sweeping change, such as the Local Courts scheme, the abolition of Imprisonment for Debt, or a General Registry, each of which would most materially alter the present administration of the law.

We have also been ever friendly to a moderate reform in the church. We have been thought indeed, by some of our friends, to carry our feelings in this respect somewhat too far; but we are well satisfied that we represent the general opinion of our profession when we again repeat<sup>a</sup> what we have, we trust, before proved, that, "according to the original institution of tithes, and established precedents, the public has the right of remodelling the existing church system, and making such appropriation of her property as the general weal may require." Whether however this reform should be attempted in the next session of Parliament, or whether it might not be advantageously deferred until the one after the next, is not for us to determine. We have long considered the subject to be within our province as lawyers; and have, from time to time, ventured to give our opinion on it; and we shall certainly continue alive to its importance. A part of it consists in the present grievances of the Dissenters, which, however, we firmly believe might be easily disposed of if the wishes of the great body be attended to without heeding the grasping demands of a few of the number.

Lord Brougham has now retired into private life, and there any feeling of opposition towards him must cease. We can here admire the versatility of his talents, his energy, his amiability. We certainly can feel no regret at the conduct pursued by us towards him; we have written "no line which dying we would wish to blot;" we can indeed readily conceive that in opposition he may be highly useful; but in all probability his official career is closed for ever.

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#### MEMOIR OF THE LATE MR. ALLEY.

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PETER ALLEY, Esq., the subject of the present short memoir, was born in Dublin, in the month of February 1770. He was the son of a Protestant clergyman of great talent and respectability. That gentleman

was said to have been the author of a comedy afterwards produced by Mr. Sheridan, under the title of the *School for Scandal*. On inquiry, however, it appears that the comedy, as purchased by Mr. Sheridan of the Rev. Mr. Alley, was very different both in title and dialogue from what afterwards appeared under that well-known title.

At the age of fourteen Mr. Alley was entered at Trinity College Dublin, where he made great progress. When seventeen years old he obtained the prize for *Belles Lettres*, and afterwards took his degree. When he had attained the age of eighteen he was entered as a student of the Middle Temple; and his case was the first instance in which that Society allowed a degree in Trinity College Dublin to shorten by two years the ordinary period of five years probation previous to being called to the bar. It is understood from good authority, that the extremely liberal nature of Mr. Alley's politics was the cause of his leaving Dublin to practise in this country. Notwithstanding this, however, he became entitled, by a grant from Government, to a pension of 300*l.* per annum. But it is highly honourable to his consistency in politics, that he never accepted one farthing of his pension. On what ground, or with what object the grant was made, it might not, perhaps, be difficult to surmise.

Mr. Alley continued to practise until very shortly before his death. That event appears to have been accelerated by his unfortunately taking in the night a powerful poison, instead of a medicine prescribed by his physician. Medical assistance was immediately procured, and Mr. Alley was shortly restored to apparently good health; but his constitution was shaken, and he died a few months afterwards,—on the 22d of July, 1834,—at the age of sixty-four years. Mr. Alley devoted himself almost exclusively to criminal matters; and if we examine the administration of criminal justice for the last thirty years in the metropolis, we shall find that he was engaged either for the prosecution or defence in almost every important case. Those who are acquainted with his talents must have regretted that he did not also devote his attention to civil proceedings. He possessed many of those qualifications which are essential to the formation of a good advocate. He was zealous, industrious, bold, and impassioned. He had the power of convincing those whom he addressed that he was sincere in what he urged. His reasoning, however, was not

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<sup>a</sup> See 5 L. O. 294.

very strong or clear, but he generally succeeded, even on points of law, in communicating his ideas so as to enable the Court fully to comprehend his meaning. The main cause of his deficiency in reasoning seems to have been a constitutional vehemence, which prevented his taking sufficient time to arrange his ideas.

With regard to his legal acquisitions, they appear to have been, in criminal matters, both deep and extensive; and his opinion was always regarded with considerable respect. In private life he was much esteemed.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

### No. XI.

#### THE ACT FOR FACILITATING LOANS ON LANDS IN IRELAND.

4 & 5 W. 4, c. 29.

THIS act is another of a series of acts which have been lately passed for the purpose of benefiting the sister country. Its intention is to encourage the investment of capital on landed securities, and may not be unworthy the attention of mortgagees, trustees, and others in this country having money at their disposal, particularly as the legal interest in Ireland is six per cent. It recites that, in last wills and other testamentary dispositions, and in marriage and other settlements of real and personal property, and in other deeds, agreements, or writings, a direction, trust, or power is often given, created, or reserved to lay out or invest money at interest on real securities, in England, Wales, or Great Britain, or to sell and convert into money real or leasehold estates, or government or parliamentary securities, or securities of foreign states, or other property, and to lay out or invest the money arising from such sale and conversion on real securities: that from the abundance of capital in Great Britain the interest of money is very much reduced, and the interest to be procured on money in Ireland is much higher than the interest to be procured on money in Great Britain: that manifest improvement has taken place in the condition and security of landed property in Ireland, which it is desirable to encourage and advance: and that it would be highly beneficial to both Great Britain and Ireland if the loan of money on landed

securities in Ireland was facilitated: And it enacts, that from and after the passing of the act, any person or persons who, under or by virtue of any direction, trust, or power already given, created, or reserved, or hereafter to be given, created, or reserved as aforesaid, is or are or shall be authorized or directed to lend money at interest on real securities, in England, Wales, or Great Britain, may lend the same, or any part thereof at interest on real securities in Ireland in the same manner in all respects as if such investment had been expressly authorized in or by such direction, trust, or power as aforesaid; and such person or persons shall not, on account of his or their so lending money on real securities in Ireland, be considered in a court of equity guilty of any breach of trust, or held accountable further or otherwise than if the money had been laid out by him or them on real securities in England, Wales, or Great Britain. (Sec. 1.)

All loans of money on real securities in Ireland under this act, in which any minor or person of unsound mind is interested, shall be made by the direction and under the authority of the Court of Chancery or Exchequer in England. (Sec. 2.)

Sec. 3 provides for loans by trustees, or public bodies, and sec. 4, that the consent of persons interested be had.

The provisions of this act shall not apply to any case in which such direction, trust, or power as aforesaid contains any express restriction against the investment of such money as aforesaid on securities in Ireland. (Sec. 5.)

And nothing contained in this act shall relieve any person or persons intrusted or clothed with such direction, trust or power as aforesaid from any responsibility as to title, security, or otherwise, either at law or in equity, save that of having lent and advanced such money as aforesaid on real securities in Ireland instead of having invested such money on real securities in England, Wales, or Great Britain. (Sec. 6.)

## INCONVENIENCE OF THE COURTS AT WESTMINSTER.

HAVING pointed out the insufficiency of the present Courts at Westminster, we now proceed to notice the difficulty of finding adequate space for the two Houses of Parliament, their committee-rooms, offices, and apartments, together with residences for their principal officers.



According to the Reports of the several Committees of the House of Commons who have taken the subject into their consideration, the site of the old Houses is inadequate for all the various purposes which are required.

In the Report of the Select Committee, dated 6th October, 1831, it is said, "No such alterations or improvements could be made in the present House of Commons as would afford adequate accommodation for the Members, due regard being had to their health, to general convenience, and to the dispatch of business." The Committee therefore recommended the construction of a new House of Commons.

A subsequent Committee, which reported on the 13th May, 1833, came to the same conclusion; and added, that "the imperfect ventilation of the present House was most injurious to the health of the Members, and that it was expedient the immediate attention of the Board of Works should be directed effectually to remedy so serious an inconvenience."

On looking into the plans of the several architects who gave evidence on the subject, we observe that great difficulty was felt in apportioning the site and providing a House sufficiently large, with lobbies for the members and the public, waiting-rooms, &c. and it does not appear that sufficient space could be found for all the requisite offices and apartments, residences, &c.; and there appears to have been an almost total neglect in regard to committee-rooms, and rooms for witnesses and other persons in attendance.

Now, as we have before said, the Courts at Westminster are well adapted to supply the deficiency; and by taking them for this purpose, money will be saved to the public, and the business of Parliament may conveniently be carried on.

We now proceed to state a few circumstances shewing the inconvenient locality of the present Courts. The Courts being situated in the south-west corner of London, contiguous to the royal parks, are more removed from the bulk of the population of the metropolis than any other spot; and in particular, their distance from the city renders them very inconvenient to a large part of the public.

It frequently happens that counsel are wanted in Court, and being at their chambers in the Inns of Court, cannot be procured in sufficient time, and delay and expence are the necessary consequence.

It is very desirable also that the Courts

should be so near the offices of solicitors that they may be informed when a cause is coming on, and thus attend personally; otherwise they are frequently obliged to leave it to the care of their clerks.

So if either of the parties in the cause be wanted, or any witness or document, the probability is, that they cannot be obtained in time. Hence records are withdrawn, nonsuits take place, and defences are insufficiently made,—followed by applications for new trials, and a long train of inconveniences, and often irreparable injury by the death of witnesses and other accidents.

It must not be supposed that this is urged on the ground of professional convenience alone, for the suitors and witnesses are equally interested in having the Courts held in the most central place. And even in consulting the convenience of the members of the profession, and facilitating the discharge of their duties, the result must prove highly beneficial to the public by promoting the right and speedy administration of justice.

## REVIEW.

*The Practice of the Law in all its Departments; with a View of Rights, Injuries, and Remedies, as ameliorated by recent Statutes, Rules, and Decisions; showing the best Modes of creating, perfecting, securing, and transferring Rights; and the best Remedies for every Injury, as well by Acts of Parties themselves, as by legal Proceedings; and either to prevent or remove Injuries; or to enforce specific Relief, Performance, or Compensation: and the Practice in Arbitrations; before Justices; in Courts of Common Law; Equity; Ecclesiastical and Spiritual; Admiralty; Prize; Court of Bankruptcy; and Courts of Error and Appeal: with new Practical Forms: intended as a Court and Circuit Companion. Part IV. By J. Chitty, Esq., of the Middle Temple, Barrister. London: Henry Butterworth. 1834.*

It would be a work of supererogation to open the notice of this book with any preliminary observations on the merit of Mr. Chitty as a legal author; and we cannot better explain the scope and purpose of this the Second Part of his Second Volume, than by extracting the following passages from the Preface:

"I have endeavoured in the following pages to give a comprehensive view of " *The Scien*

of Practice," as distinguishable from the mere routine of issuing and serving a writ, delivering or filing a declaration, &c., which may generally be conducted by a clerk of comparatively little knowledge or experience. My reason for publishing this part *separately* from that relating to *mere practice* is, that it may be found more extensively interesting and useful, not only to *all legal Practitioners*, but also to the *Public*, than the mere detail of practice; and that consequently many may wish to possess it as a *separate work*, without being incumbered with the latter. Every barrister, pleader, solicitor, attorney, or proctor, whatever department of the law he may pursue, is, or ought to be, anxious to *combine* so much knowledge of the jurisdiction and course of practice of *all the fourteen principal Courts of Justice*, and to be so accustomed to *compare them* as regards their utility, as to enable him *promptly* to advise his client which *remedy* is, under the circumstances of his case, *preferable*; whilst at present too frequently a *Common Law* barrister or attorney recommends a remedy in the Court where he practises, and the *Chancery* barrister or solicitor prefers a Court of Equity; and the doctors and proctors naturally think most favourably of their own Courts, although there are constantly better remedies elsewhere. And addressing myself to the *public*, or at least to those *private individuals* who have property or rights to protect or defend, I assure them that very frequently success in a suit or proceeding depends on a *client* being able somewhat to *judge for himself*, though he should not absurdly do more than *suggest*, and rarely interfere after the particular remedy has been decided upon. All understand and admit the force of the well known maxim, that after attaining a certain age, every man is either "a fool or his own physician;" and every experienced physician knows that frequently the patient suggests to him a remedy or a regimen which he finds it expedient to adopt. So in law, if *private gentlemen* would inform themselves of the outline of *Remedies* and the *Principles of Practice*, they would frequently secure a welcome result, which might otherwise be endangered; and I therefore invite their attention at least to so much of the following pages as may be applicable to their situation.

"Be this, however, as it may, forty years' experience has taught me how narrow and limited are my own legal attainments, and to induce me to think that many legal practitioners are very frequently called upon to advise upon branches of law, with which they are too little informed to enable them scarcely with integrity or propriety to advise upon the case, and still less upon the practical remedy. Many years ago, therefore, I resolved, as well for my own assistance as for the use of my pupils, to collect all the principles and rules which govern the practice of every Court, at least in the United Kingdom; and the following pages relative to those of *general jurisdiction* are the result of that labour, rendered more difficult by the recent alterations in the law, all of which are incorporated, and which have caused

even the admirable work of Sir William Blackstone (hitherto the *vade mecum* of legislators and private gentlemen), and many other excellent treatises, to be almost *obsolete*, and in practice even *dangerous* to follow.

"When examining in distinct sections separately the particulars of the jurisdiction of each of the *fourteen principal Courts*, whether exclusive or concurrent, it will be found that there are suggestions and full directions, not only when a particular remedy can be pursued *only* in one particular Court, but also when one of several Courts, having *concurrent* jurisdiction, is to be *preferred*, and *why*. The leading distinctions and peculiar advantages arising, under varying circumstances, from proceeding either at *Law* or in *Equity*, or in the *Ecclesiastical* or *Admiralty Courts*, or by adopting a *summary* in lieu of a *formal*, dilatory, and expensive remedy, are constantly explained. A full examination into these is of the utmost importance, and constitutes what may be termed the science of law, instead of the mere practice."

The plan of the book, as thus stated by Mr. Chitty, has been ably followed out in all its numerous details. It may be questionable whether the author's design of rendering the work useful *out of*, as well as in the profession, can be realized, and indeed it is scarcely reasonable to expect it. Mr. Chitty, however, has contributed all that the subject afforded to interest every class of his readers; and we think that the separation of the scientific from the practical part of the business of the Superior Courts, is an improvement in this department of legal literature; and the present volume is certainly a valuable addition to a law library. Many parts of it are of an original character—the result of the long experience and reflection of the writer; and both as to matter and style, will be read with interest by the profession in general. As an instance of the nature of this part of the treatise, we select the following, on the *choice of the Court* before which peculiar cases should be carried:

"Subject to the before enumerated exceptions, the great bulk of litigation between private subjects (consisting principally of *personal actions* and the action of *ejectment*) may be instituted in either of these three principal Courts at the option of the plaintiff. But still there are many circumstances, as well at law as in equity, or of a spiritual or ecclesiastical nature, not strictly of *jurisdiction*, but of essential importance to be considered, in preferring one Court to the other, and a few of which we will now endeavour to suggest.

"These principally relate to, *first*, the nature of the question, whether of fact or law; thus, if it be *even* collaterally connected with the criminal law or corporation law, or paro-

chial settlement, &c., the King's Bench may be preferable, because those subjects are there most frequently discussed, and consequently best understood. If on the other hand it relate to real property, or require a very full and deliberate investigation, then it may be advisable to proceed in the Court of Common Pleas; <sup>a</sup> whilst if the matter be connected with a revenue question or the subject of tithe, the Court of Exchequer should in general be resorted to; unless the interest of the crown or of a revenue officer be opposed to the complainant; because in general revenue and *tithe* questions are there most frequently discussed.

"*Secondly*, should be ascertained the probable favourable or adverse decision, opinion, or even inclination of one or more of the Judges of a particular Court, not only upon certain questions of *law*, but also upon some matters of *fact*, or ethics, or evidence affecting, or at least bearing upon, the point of *law* or *fact* to be decided in the particular case, or his sentiments upon the amount of *damages* that should be awarded in some actions connected with the feelings; as in actions for criminal conversation, or for debauching a daughter, or for a libel, &c., or on the subject of *costs*, and differing from that of the other Courts or Judges; and especially who will be the Judge before whom the cause would probably be tried."<sup>b</sup>

<sup>a</sup> "It is to be regretted that an exclusive jurisdiction over all conveyancing and real property questions, and actions of ejectment, has not been vested in or rather restored to this Court, as they would certainly be there better discussed and considered, and an uniform system of real property law established."

<sup>b</sup> "More than mere allusion to examples might be improper; but it is well known that in one Court there is a judge pre-eminently distinguished for his high constitutional principles and just views of the rights of the crown and of the subject, and who, in all trials between the king and the people, will always evince his opinion that the dignity of the crown is best upheld by the waiver of prerogative, when in competition with the just interests of the subject. In another Court, a judge, distinguished for his profound general legal knowledge and excellent dispassionate decisions; and in the other Court of law, a judge, justly celebrated for his perspicuity, especially in all subjects relative to patents and inventions, and before whom therefore a complicated patent cause might with confidence be tried. It will not be denied, that in many cases it is of the utmost importance, not only that the judge should be of general ability, but also be familiarly acquainted with the subject to be tried; for otherwise he will not be able to explain and observe upon to the jury the facts and law applicable to the case, and a just result will be endangered. Lord Mansfield was celebrated for his great knowledge of insurance and mercantile law, and consequently, whilst

## REGISTRATION OF SETTLEMENTS AND REVERSIONARY ASSIGNMENTS.

*To the Editor of the Legal Observer.*

Sir,

I have lately read with much pleasure the observations of Sir Edward Sugden, in his new edition of his work on Vendors and Purchasers, relative to the lately rejected Registry Act. In those observations I most fully concur, except that I think he pushes the argument arising from the *danger* of depositing the title-deeds of the country in one place, a little too far. If it could be shewn that a General Register would in other respects be desirable, that objection ought not to prevail, as no doubt the same confidence which induces persons to place their personal property under the immediate controul, and almost at the mercy, of Government, would easily be extended to the placing the evidences of their titles to their landed estates in the same custody. National faith has been of late very slightly talked of, and the reformers of a future age may be proud to act upon the suggestion of one whose principles and name have long survived him,—“that a pennyworth of sponge would suffice to wipe out the national debt.” Yet, notwithstanding this, we find that the public not only place their property, but also the evidence of their title to it, in the hands of the Government or its agents. As regards the depository of deeds to which parties

he presided, an admirable system of mercantile law, as regarded those subjects, was established. Whilst it is well known that another judge was so entirely ignorant of insurance causes, that after having been occupied six hours in trying an action on a policy of insurance upon goods (Russia duck) from Russia, he, in his address to the jury, complained that no evidence had been given to show how Russia ducks (mistaking the cloth of that name for the bird) could be damaged by sea water, and to what extent. In the time of the late Lord Kenyon we remember that verdicts for large damages were favoured in actions for all violations of morality and injuries to the feelings, and upon motives quite consistent with the existing principles of law, as explained by the late Lord Erskine. Whilst before another deceased judge the mere suggestion of conspiracy or fraud inclined him towards conviction, but yet who abstained from giving moral lessons from the bench; although another judge, carried away by the latter object, not unfrequently lost sight of the main point in the cause. These few instances are merely alluded to, in order to evince the expediency of some consideration of the tribunal to be selected."

are mutually entitled, the argument is of little value, for the reasons I have already given,—namely, that the deposit of deeds would be voluntary and of limited extent.

But there are some other observations of Sir Edward, to which, as they in some degree bear out the remarks which I have ventured to address to you, I must here advert. In enumerating, in p. 224 of the 2d vol., the provisions that should be made to relieve titles *as they now stand*, he says, “the representation to terms should be facilitated.” It was with this view that I suggested (see L. O. vol. 8, p. 57,) that a provision should be made that terms of years assigned to the person who may be placed over the depository should pass to his successors in office. The subjects are not necessarily connected, and consequently, though no depository may be established, there is no reason why some public legal individual or individuals should not be constituted into official assignees of terms of years.

But this is of minor importance compared with the testimony which Sir Edward bears to the necessity of a register for assignments of reversionary interests in personal property. He observes (p. 226) that “*the greater number of frauds is committed in the sale to different persons of a reversionary interest in stock;*” and he adds, that no provision was made in the proposed measure “for registering instruments affecting such property.” Though stock only is mentioned, the remark applies equally to money invested on mortgage. It is true that the passage to which I have referred does not go quite the length of saying that the learned author would approve of a registry for assignments, but I think it has that aspect; and at all events it shews that the subject is deserving of serious consideration.

Having read the further communication of your correspondent X. Y., I must trouble you with a few observations by way of supplement to the preceding observations. I cannot admit that, according to the existing practice, the solicitors for the annuitants in the case mentioned in my letter, vol. 8, p. 249, were guilty of any neglect in omitting to inquire whether any settlement was made prior to the death of the testator, by which the life interest devised to the wife could be controuled. But even in cases of clear and gross negligence, I must still maintain, that the responsibility of the solicitor, like that of a trustee, ought not to be put in competition with the security which a register would afford against the consequences of neglect. Before we place reliance upon the doctrine that trustees and agents are *liable* to make good the losses occasioned by their neglect, we must be satisfied that they are *capable* of making good the losses, and that they will do so without compulsion.

The following are the particulars of the other cases to which I alluded in my last. In the one case, a gentleman, on the marriage of his son, settled a jointure upon his (the son's) wife in the event of her surviving her husband. Some years afterwards the father made a family

settlement of the estates thus charged with the jointure, but without noticing that incumbrance. The trustees under this settlement have sold parts of the property without the concurrence of the jointress, who, if she survive her husband, will have a legal charge upon the estate. The other case is still more directly in point. A person made a settlement upon his marriage, upon himself for life, with limitations for the benefit of his wife and family, and afterwards mortgaged it in fee, keeping back the settlement altogether.

I have no other means of knowing whether Mr. William Brougham, in his last speech upon the Registry Bill, alluded to the case mentioned in my former letter, than the inference to be drawn from the similarity in the facts. The case is well known in the profession, but as the parties are living, Mr. Brougham, probably, did not like to mention their names.

I shall not enlarge upon the question as regards the registry of assignments of reversionary interests, being satisfied that I cannot adduce stronger proof of the necessity for such a measure than the testimony of Sir Edward Sugden.

What may ultimately be the effect of the decision in the case under Mr. Mahery's bankruptcy it is difficult to imagine; but, even according to X. Y.'s shewing, it is sufficient to prove that the right of an assignee depends upon very slender grounds, and that nothing short of a register can give a purchaser of reversionary property a satisfactory title.

This “infallible panacea,” as your correspondent is pleased to term it, is not intended *by me* to be in *addition* to the present practice. As he seemed to attach so much importance to a personal acquaintance with the trustees of the fund assigned, I thought it right to remind him that he might, if he wished it, still communicate with the trustees, though such a communication would not be absolutely necessary, except perhaps for the purpose of ascertaining that the fund is in existence.

X. Y. instead of meeting the question of the *limited* register which I have proposed, seems most anxious to prejudice my arguments and facts by arguments which apply only to a *general* register, to which I am perhaps as much opposed as himself. In his first letter he asserted, or rather insinuated, that the House of Commons had already decided against the establishment of a register for assignments, when the question had not even been so much as proposed to their consideration; and in his second, he brings forward some facts—certainly very creditable to his industry and honor—to prove the ill effects of a general register from the publicity it might give to transactions, which, for the preservation of credit, and the quiet enjoyment of property, ought to be concealed. I would, however, remind your correspondent, that in my letter in vol. 8, p. 121, I have endeavoured to meet this objection as regards the more limited register which I have suggested; and I would add, that if proper precautions are adopted, a register of assignments would rather prevent

than encourage publicity. The trustees to whom notice must, under the present system, be given, are very frequently the last persons to whom the parties wish the information to be communicated.

A MODERATE REFORMER.

## SELECTIONS FROM CORRESPONDENCE.

No. LXXXIV.

### UNIFORMITY OF PRACTICE.

*To the Editor of the Legal Observer.*  
Sir,

It is difficult to understand upon what principle the several Judges of the respective Courts act at their chambers. No man can tell what will be the result of a summons which is to be decided there, until he comes before the Judge in attendance. The following circumstance will shew the great inconsistency of there not being a settled and absolute rule, by which all the Judges at chambers should be bound.

A summons was taken out to shew cause why a writ of summons should not be set aside for irregularity, with costs, which was decided by Lord *Dennan* to be irregular, and he accordingly set it aside with costs. The costs were taxed, and paid by the plaintiff's attorney, at 2*l.* odd, and he was compelled to bring another action. It so happened that the very same attorney who was concerned for the defendant in this action, sued out a writ against the attorney for the plaintiff, but for what he was totally ignorant: the form of action was upon the case; he therefore thought it was for a tort of some description which might have been raked up; however the copy writ served upon him was informal and irregular, and he took out a summons to set it aside, for irregularity. It was heard by Mr. Justice *Littleale*, who was of opinion that the service was bad, and directed it to be set aside, but stated that he could not give costs, as it was a rule *he* had made never to do so at chambers, although the attorney represented the circumstance of the opposite attorney having taken advantage of his proceedings, and the decision of Lord *Dennan* thereupon. Unless, therefore, some definite rule be made by which *all* the Judges should be bound to act at chambers, irregularities of all descriptions may be committed with impunity, as the parties will not, in many cases, have the opportunity of going to the Court, and unless they go to a Judge at chambers *at once*, and in that case at their own expense, they are without remedy. Is this uniformity?

T. B.

[The attendance of the same Judge for a whole term and vacation would be the means of producing a partial uniformity, if he sat for all the Courts.—ED.]

### HARDSHIPS OF LAWYERS' CLERKS.—EVENING ATTENDANCE.

*To the Editor of the Legal Observer.*

Sir,

I thank you for the insertion of my letter, because, thereby, attention will perhaps be called to the subject of it; but, aware of your weight and influence in the profession, I would much rather have drawn upon yourself for an article on our behalf.

With your permission I will once more intrude upon your columns. In my former letter I divided the grievances under which I consider the law clerks as labouring, into two heads, the one being the hours of attendance, the other the amount of remuneration. The latter is a subject of so much delicacy, as forbids me to enter into a lengthened discussion upon it. I shall therefore merely invite the attorneys generally to consider the amount of salary they give to their clerks, and further to consider the sort of living to which those salaries are adequate. I would also ask whether the labours of a clerk do not deserve to be compensated at least as liberally as those of a mechanic.\*

Upon the other point, viz., *amount of labour*, I must beg to trouble you at greater length.

When I see the clerks in the public and assurance offices leaving business at four o'clock, and the numerous individuals engaged at the Bank of England at the same or at an earlier hour; when I consider that all the numerous banking establishments close at five o'clock, and that the services of no artisan or mechanic are required after six; I propose to myself this question;—Is there anything in the duties of an attorney's office which compels, as a matter of necessity, a later attendance than these hours; and if so, is there no way of getting rid of that necessity? I shall be met by the following among other objections.

The service of all notices, summonses, &c. is good till nine o'clock; some of these may have to be attended to early in the morning, and may require more than off-hand consideration; hence the necessity of some one being in attendance to receive them.

Some of the public offices are open in the evening, at certain times of the year, till seven and even eight o'clock, and it is often necessary to the interests of a client to take an immediate judgment, or some other important step in a cause: for purposes such as these the clerk's attendance is also required.

The Judge who sits at *nisi prius* is often detained beyond the usual hour, and has then to dispose of the business at chambers, which sometimes keeps him as late as eight o'clock: another reason for the clerk's attendance. There are other difficulties which suggest themselves to me, but with which I will not trouble you.

I shall be told what I am now furnishing

\* A necessary question connected with this inquiry would be—is not the employer of the mechanic better and more regularly paid than the lawyer.—ED :

arguments against myself, and I admit that it has such an appearance; but as I am not writing for a one-sided object *merely*, and as I do not wish to obtain for the class to which I belong any advantages, the attainment of which will materially, or indeed at all, affect the interests of our employers, I am by no means anxious to conceal the difficulties which present themselves to a removal of the grievances under which we labour. The attorneys as a body are estimable for all good qualities, and in spite of ages of prejudice and misunderstanding, and notwithstanding that there are too many among them who have disgraced themselves, and thereby heaped discredit on the profession generally, I am confident they have made, and are making, a good impression of their worth on all classes of society, whose good opinion is desirable. With these feelings (of the concurrence in which by all my fellows, I venture to assure myself), I am content to state the case, both on the one side and on the other, with perfect candour and sincerity—all I ask being an attentive consideration of it; convinced that should such consideration result in feelings favourable to us, and of which I do not doubt, some means will be devised by which our condition may be ameliorated.

Let me in a word or two consider the objections I have enumerated.

1. In Dublin all notices, &c., which require attention on the next day, must be served, I believe, before five o'clock, and such as do not require so prompt an attention, before six or seven at latest. I see no substantial objection to the adoption of such a rule here, and one necessity of a late attendance would thereby be removed.

2. Is there any good reason for opening the offices in the evening, when an hour, or, in term, two hours, extension of their *daily* business, would be incalculably more convenient to all parties? The official persons themselves, I am sure, would not object to such a regulation—the clerks would hail it with satisfaction; nor would the attorneys view it with other feelings.

3. I hope not to be considered presumptuous in speaking of the highest class in our profession, the Judges. A different division of their labours would not, necessarily, make them more irksome. Has an increase in their number facilitated the dispatch of business? Although it has greatly done so, I fear not to the extent that was anticipated. I would venture an opinion, that three Judges are quite enough to sit in Banc.: there would then be a majority, if on any point their opinions were not in unison; and, for my own part, I should as willingly leave a case to the decision of *three* men, called to the bench in respect to their knowledge of a profession in which their whole lives had been passed, as to *four*: there would still be two Judges at liberty, one to sit at *niisi prius*, the other to dispose of the business at chambers, which, if he were to attend to it daily, he could do in three hours at most, and this with perfect ease to himself, and with

perfect convenience to the other branches of the profession.

It will be objected to me, that it is very easy to point out an objection, and seek its removal, but not so easy to find and apply the means of doing so: it will be conceded to me that the alterations I have suggested would go far towards the attainment of that which I am advocating, but then how are they to be brought about: it will be asked, what can the attorneys do? These are certainly staggering considerations, and such as, were I writing for an entirely selfish purpose, I should be unable to say any thing to; but, as I would merely bespeak the good feelings and kind consideration of those whose attention I am endeavouring to attract, they are not so potent as they otherwise would be. All I ask of the attorneys, as *individuals*, is to do all they can to increase the comforts of the clerks in their own immediate employment. All I ask of them, as a body, is that, if they see or can devise any means by which the changes I have suggested may be brought about, and by which alone, I fear, we can hope to be advantaged, they will use all their influence to accomplish a thing so desirable.

If by the changes I have mentioned, or by any other means, the *absolute necessity* of a late attendance were removed, the clerk would be enabled to leave at, say six o'clock:—but would not his services be thereby abridged, and the master's interests be consequently affected? If no other alterations were adopted, they perhaps would; but the clerk would willingly give up an hour at his dinner time, for the privilege to leave earlier in the evening. I would propose the following hours of attendance, which are even now adopted by some offices of high respectability: viz. in term, from nine till six, or half past; in vacation, from half-past nine till six, with an hour for dinner, at any time best suited to the convenience of the office. The clerk's attendance under this arrangement would be rather less than at present; but the inclination to better his condition and increase his comforts, would be met by and induce a corresponding increase of diligence and attention; so that, in the adoption of it, the interest of the attorney would rather be promoted than deteriorated.

A LAWYER'S CLERK.

## SUPERIOR COURTS.

### Rolls Court.

#### TRUST.—CONDUCT OF TRUSTEE.—COSTS.

*A mortgagee, on being paid the mortgage debt, becomes a naked trustee of the mortgaged premises for the benefit of the mortgagor, and is subject to the general principles and rules of this Court applicable to other trustees.*

*Circumstances in which such mortgagee is*

*held not entitled to his costs, although acting honestly on erroneous advice.*

The circumstances of this case, and the course of the arguments of Mr. Pemberton and Mr. Preston, for the plaintiffs, and Mr. Bickesteth and Mr. Richards, for the defendant, are sufficiently stated in the following judgment of the *Master of the Rolls*, to render the principles laid down by his Honor, and the decision, clear and intelligible.

*The Master of the Rolls.*—In this case the defendant is a satisfied mortgagee of certain freehold and leasehold estates, and therefore a mere naked trustee of those estates for the benefit of the mortgagor or those who claim under him. The mortgagor, Mr. Angier the elder, who is one of the plaintiffs, conveyed his equity of redemption in the mortgaged premises to trustees for the purpose of sale, and in the deed of conveyance reference was made to another deed of the same date, which declared the manner in which the mortgagor intended that the money raised by the sale should be applied. The defendant having received his mortgage money, and being called upon to clothe the equitable interest so given to the trustees with the legal estate, refused to comply, unless all who were interested in the deed directing the application of the monies to be raised by the sale were made parties to the conveyance. The material question then in this suit is, whether the defendant was justified in insisting that the persons thus interested in the produce of the sales should be made parties. I am clearly of opinion that they were not necessary parties, and I will explain, as distinctly as I can, what I ~~understand~~ to be the principle applicable to cases of this kind. That principle lies in a very narrow compass. A person seized of a mere legal estate and having no beneficial interest therein, cannot so deal with that estate as to confirm any act done to the prejudice of those to whom the beneficial interest belongs. If he confirms any such act, he becomes himself a party to a breach of trust, and answerable accordingly. The party seized of the legal estate, where the equitable interest has been conveyed to trustees, is bound so to deal with that estate as to enable the trustees to execute their trust, and the obligation is imposed upon him for the benefit of the *cestui que trusts*, who, unless he so acted, could never acquire and enjoy the property to which they are beneficially entitled. If, however, any person standing in such a situation do any act beyond the mere purpose of enabling the trustees to execute their trust—any act having a tendency to enable them to commit a breach of trust to the prejudice of the persons beneficially interested—he will then undoubtedly be held a party to such breach of trust, and answerable accordingly. Now the principle I have here stated comprises all that is applicable to the present case. What, is the conveyance here sought from the defendant? Not a conveyance confirming any act done by the trustees to the prejudice of their *cestui que trusts*—not to enable the trustees who are to deal with the beneficial interest in

the property to do any thing to the prejudice of those having that beneficial interest—but an act necessary for the single purpose of enabling the trustees to carry the trust deed into effect. On that principle I am clearly of opinion that the defendant was not justified in resisting the execution of this deed, upon the ground that the persons beneficially interested were not made parties to it. At the same time I think that the conduct of Mr. Stannard, in the course of the correspondence, has, in some respects, been right. I think he was perfectly right in having this deed submitted to the consideration of counsel before he undertook to execute it; but I think he was not right in insisting upon being furnished with a copy of the second deed, which declared how the trust money was to be applied. In some instances a trustee may be entitled to a copy of such deed; if, for example, it be of so complicated a nature that counsel cannot safely advise upon it from a knowledge of its general contents. The deed in question was not, however, of this complicated description. It was a short and simple deed, directing the application of the produce of the sale, first, to the payment of incumbrances, next to the payment of debts generally, and then to certain family purposes; the trusts of which, therefore, as far as was necessary for the consideration of counsel, might have been stated in two lines. After it had been once inspected by the defendant's solicitor, a second inspection was offered, and was refused; and in this respect also the defendant acted erroneously. Again, when the objection was raised by his counsel to the form of the conveyance, it was proposed, on the part of the plaintiffs, that the defendant should avoid the difficulty by executing a mere declaration of trust, and I think he was extremely ill-advised in not closing with that proposal, by which the objection would have been entirely removed. Under these circumstances, it becomes extremely important to consider the question of costs. I adhere fully to the doctrine laid down in the case of *Taylor v. Glanville*, where the question turned upon the particular conduct of the trustee, and where I was of opinion that if the conduct of the trustee was *bona fide*, and not influenced by improper motives, he ought to be allowed his costs. I considered a trustee, under such circumstances, to be entitled to his costs, because I thought it of the utmost importance to the affairs of mankind that individuals, who were the friends of the persons beneficially interested, should become trustees; and because no one would undertake the office of trustee, if in cases where he acted in good faith and to the best of his judgment, he were not to be allowed the costs he had incurred. The present case, however, involves a principle of a very different kind. The defendant here did not act upon his own judgment; it was not his own honest intention that governed him; but he submitted to be advised in the course he took by persons in whom he placed confi-

dence. Who, then, ought to suffer, if he has been improperly advised? Is the *cestui que trust* to be saddled with the costs that arise from the defendant having consulted a person who turns out, in the opinion of the Court, to be mistaken? Upon whom are the consequences of that mistake to fall? Upon the party who thought fit to consult a person, by whom unfortunately he has been misled, or upon the other, the innocent party? If this were not the case of a trustee, I should say, without hesitation, that the party who thinks fit to rely upon one who gives erroneous advice, must expect the same consequences as if he had acted erroneously upon his own discretion and responsibility. But in the case of a trustee, and with reference to the general interests of mankind, and to the considerations already adverted to, I think that even in such circumstances a trustee is not to be visited with the consequences of error, in the same way as if he were acting on his own account. I cannot, therefore, make a trustee pay the costs of a suit, where he has acted innocently and in good faith, as in this case the defendant certainly has; but here the defendant has been badly advised, and that by an agent of his own selection; and upon that ground I must refuse him his costs, though I will not compel him to pay the costs of the plaintiffs. The decree consequently will be, that Mr. Stannard execute the conveyance of the legal estate to the trustees, but without costs.

*Angier and others v. Stannard*, at the Rolls, Chancery Lane, June 27th, 1834.

#### King's Bench.

[Before the four Judges.]

#### AMENDMENT.—PLEADING AND RULES.— SEVERAL COUNTS.

*The question of whether a declaration may be amended under the 3 & 4 W. 4, c. 42, ss. 23 & 24, depends on whether the plaintiff was confined to one count by the new Pleading Rules.*

This was an application by leave of the learned Judge who tried the cause, to amend the declaration pursuant to the provisions contained in the 2 & 4 W. 4, c. 42, ss. 23 and 24. It was an action against the sheriff for allowing a defendant to escape after he had been arrested. At the trial, however, it was proved only that an opportunity had offered itself of arresting the party, but that the sheriff had not availed himself of it by arresting the party. An application was then made to the learned Judge trying the cause, for leave to amend the declaration according to the facts, pursuant to the above act. The learned Judge reserved the question of the plaintiff's right to amend, and the present application was made in pursuance of that reservation.

*Taunton, J.*—Why was there not the usual count introduced into the declaration, for not arresting the party when the sheriff might have done so.

The reason assigned was that the general

impression entertained by the profession was, that where there was but one transaction according to the new rules only one view of it could be alleged in the declaration. Here only one transaction took place, and, therefore, only one view of it was alleged in the declaration.

*Putterson, J.*—If the plaintiff was not confined to one count, then this case is not within the act of Parliament authorizing amendment. In this case it is true there was but one transaction, but there might in one transaction exist several causes of action. For instance, there might be a time when the sheriff might have arrested the party and had not done so, and he might also immediately afterwards have arrested the party and permitted him to escape. Thus, although there was but one transaction, there might be several causes of action arise in it. If that were so, and only one count was introduced, the present case is not within the act of Parliament. It is, however, proper that this matter should be discussed.

*Lord Denman, C. J., and Williams, J.* concurred.

Rule granted.—*Guest v. Everest*, M. T. 1834. K. B. F. J.

#### TROVER.—MISDIRECTION.—DETERIORATION.

*In an action of trover the plaintiff cannot recover for the deterioration of property while detained by the defendant.*

This was an application for a new trial, first, on the ground of misdirection by the learned Judge who tried the cause; and secondly, on the ground of the verdict being against evidence. It was an action of trover for horses detained by the defendant, from the month of January to the month of March. On the part of the plaintiff three witnesses were called, who proved the fact of the detention; and also, that the defendant, by the negligent manner in which he had kept the horses, had caused them to be greatly deteriorated. On the part of the defendant no witnesses were called, but the learned counsel on that side endeavoured to impeach the testimony of the plaintiff's witnesses on the ground of their being his servants, and suggested that the evidence adduced did not amount to a conversion. The learned Judge, in his direction to the jury, told them that if they believed the evidence amounted to a conversion, they ought to give the plaintiff temperate damages for the injury sustained by him, in consequence of the horses being detained by the defendant, but to give no damages at all for the deterioration of the animals in their value, the horses having been returned to the plaintiff. These directions, it was contended, were wrong, because the plaintiff was entitled to compensation for the deterioration of the horses, although they had been returned. It would be most unfair to the plaintiff if it were otherwise; as although the horses themselves were returned, they might be returned in so deteriorated a state as to render them almost valueless. The verdict of the jury was



for the defendant, and that was clearly against evidence, because the witnesses, who were called on the part of the plaintiff, were unanswered and unimpeached.

Lord Denman, C. J.—It does not appear to me that there is any ground laid for disturbing the present verdict. One question necessarily was, whether evidence of a conversion was adduced before the jury. The statements of the plaintiff's witnesses were impugned on the ground of their close connection with him. Whether they proved a conversion satisfactorily, was a question for the consideration of the jury; and I cannot say that their verdict was against evidence, if they did not believe the witnesses called to prove it. If the verdict cannot be disturbed on that ground, it becomes unnecessary to consider the others, as if the plaintiff was entitled to no damages at all, it is immaterial to consider what conditional directions were given by the learned Judge as to the mode of assessing them. But were it necessary to determine the question, it must be clear that the plaintiff could not be entitled to damages for ill-treating the horses, when by his declaration he claimed the full value of the horses themselves, although he has had the horses returned. If he seeks to obtain any reparation for the injury which is alleged to have been done to them, he must bring a special action to recover it. With respect to the direction as to the amount of damages which ought to be given for the loss accruing to the plaintiff, in consequence of the loss of the use of the horses, it appears to me that the learned Judge was perfectly right. On the whole, therefore, in my opinion, no rule ought to be granted.

Tuunton, J.—As it appears there was an attack made on the credit of the witnesses called to prove the conversion, and the jury have not believed them, I cannot say that the verdict is against evidence. As to the misdirection with respect to the damages for deteriorating the horses, in my opinion, on this declaration, the plaintiff was not entitled to recover damages for the ill-treatment of the horses. As to the direction to give temperate damages, the learned Judge would have done wrong had he not given such a direction.

Patteson, J.—When the case was tried, there was a doubt whether such an act had been done by the defendant as amounted to a conversion. If the jury disbelieved the witnesses called to prove it, it becomes unnecessary to consider the other questions, and therefore I think there are no grounds for disturbing the first verdict.

Williams, J., concurred.

Rule refused.—*Quailey v. Edwick*, M. T. 1834. K. B. F. J.

### King's Bench Practice Court.

#### EJECTMENT.—SERVICE OF DECLARATION.

*Service of a declaration on the daughter on the premises is not sufficient.*

Motion for judgment against the casual ejector. The affidavit stated that the depo-

nent had gone to the premises to effect a service of the declaration, and there he saw the daughter of the tenant in possession. On inquiring for the latter, he was told that he was absent. As he was returning, he met the wife of the tenant in possession. When he told her the object of his call, she appointed to meet him at the premises, where she said he might serve her. On his going back, however, she was not to be found. He again saw the daughter, whom he served with a copy of the declaration, at the same time properly explaining its nature. This occurred on the 30th October.

*Littledale, J.*, was of opinion, that the facts detailed in the affidavit were not sufficient to entitle the plaintiff to the rule, either absolute or nisi.

Rule refused.—*Doe d. George v. Roe*, M. T. 1834. K. B. P. C.

### Common Pleas.

#### CAPIAS.—INDORSEMENT.—AFFIDAVIT OF DEBT.—BILL OF EXCHANGE.

*If the indorsement on a capias does not strictly follow the directions in R. H. 2 W. 4, Reg. 11, it is irregular.*

*An affidavit to set aside a Judge's order, stating the substance of that order, is sufficient.*

*In an affidavit of debt on bills of exchange, if it appear that the day of payment is passed, the dates of them need not be stated.*

A rule was obtained for rescinding an order made by Lord Denman at chambers, in the last vacation, for cancelling the bail-bond, and the costs to be paid by the plaintiff, on the ground of irregularity in the process. The irregularity complained of was, that in the indorsement on the copy of the writ of *capias*, it was stated that further proceedings would be stayed on payment of the debt and costs "within four days from the execution hereof," while the word used in 2 Reg. Gen. H. T. 2 W. 4, was "service," and not "execution."

As a preliminary objection it was submitted, that the plaintiff's affidavit did not set forth an office copy of the Lord Chief Justice's order.

*Tindall, C. J.*—It states the substance of the order, which is sufficient.

It was then contended, that as the rule of Court, giving the form in question, was made before the passing of the Uniformity of Process Act, it ought to be considered with reference to the then practice. At that time bailable process was executed and not served, so that "execution" and not "service" was the proper word to use in the indorsement on the *capias*. A form suggested in a rule of court was not to be followed literally in every case, whether applicable or not. In this case the word "execution" had been properly substituted for "service;" and more especially when, in the body of the writ, the word "execution" was used.

*Tindal, C. J.*—A difference of opinion did prevail among the judges, and I thought the

word "execution" was rightly used. Others of the judges thought, however, that the rules of the Court ought to be more strictly adhered to. It was ultimately determined that non-compliance with that rule ought not to be punished with the same consequences as non-compliance with an act of Parliament; but that the plaintiff ought to amend. The rule we shall pronounce is, that the order of Lord Denman be rescinded, the plaintiff being at liberty to amend the indorsement on the writ, on paying the costs, and of this application.

It was then objected to the affidavit of debt, the date of the bills of exchange on which the action was brought not being stated.

The Court said that it was not necessary to state the date of bills of exchange, in affidavits of debt, if it appeared that the time of payment was passed. That sufficiently appeared in the plaintiff's affidavit.

Rule absolute accordingly.—*Shirley v. Jacob*, M. T. 1834. C. P.

### Exchequer of Pleas.

DISTRINGAS.—DEFENDANT ABSCONDED.—  
OUTLAWRY.

*If it appears that the defendant has absconded in order to avoid his creditors, and had left servants at his house, a distringas may be obtained without serving the summons.*

This was an application for a distringas on the usual affidavit of three calls made at the defendant's house, and an appointment was made on each occasion. The last time a copy of the summons was left. A servant only was to be seen, and the answer given every time was, that the defendant was gone abroad, the servant could not tell where. It was also sworn, that the defendant was gone abroad to avoid his creditors.

Gurney, B.—You may take your rule.

Rule granted.—*Moon v. Thynne*, M. T. 1834. Excheq.

WITNESS.—COMPETENCE.—RELEASE.—INTEREST.

*Where a witness, incompetent without a release, was allowed to be examined, the opposite attorney undertaking to release him, and afterwards the attorney would not do so, the Court refused on that ground to grant a new trial.*

This was an action to recover the value of a horse let to the defendant by the plaintiff, and killed by the negligence of the former. The only witness called by the plaintiff was a man who, the defendant alleged, was the cause of the accident, by negligently driving his gig against the plaintiff's horse, whilst the defendant was using it.

The learned Judge who tried the cause held the witness to be incompetent without a release. To save time it was agreed the witness should be examined, without waiting for the release, which was to be prepared in the meantime. The plaintiff had a verdict. After the trial, the

plaintiff's attorney refused to release the witness. His counsel were of opinion a release was not necessary.

A rule nisi for a new trial was afterwards applied for, on the ground that this was a fraud upon the Judge at nisi prius, and also on the defendant.

*Per Curiam*.—It appears that this evidence was received for the convenience of all parties, upon the attorney's undertaking to give him a release. The non-compliance with that undertaking would justify an application against him by the witness, but could be of no importance in the case, as the bias of the witness was as much removed by the undertaking as it would have been by the release.

Rule refused.—*Henning v. English*, M. T. 1834. Excheq.

### CHANCERY SITTINGS

AFTER MICHAELMAS TERM.

Lincoln's Inn.

BEFORE THE LORD CHANCELLOR.

Thursday	. Dec. 4	The First Seal.
Friday	. 5	} Rehearings & Appeals.
Saturday	. 6	
Monday	. 8	
Tuesday	. 9	The Second Seal.
Wednesday	. 10	} Rehearings & Appeals.
Thursday	. 11	
Friday	. 12	
Saturday	. 13	The Third Seal.
Monday	. 15	} Rehearings & Appeals.
Tuesday	. 16	
Wednesday	. 17	
Thursday	. 18	The Fourth Seal.
Friday	. 19	} Rehearings & Appeals.
Saturday	. 20	
Monday	. 22	
Tuesday	. 23	The Fifth Seal.
Wednesday	. 24	Petitions.

BEFORE THE VICE CHANCELLOR.

Thursday	. Dec. 4	First Seal—Motions.
Friday	. 5	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Saturday	. 6	
Monday	. 8	
Tuesday	. 9	Second Seal—Motions
Wednesday	. 10	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Thursday	. 11	
Friday	. 12	
Saturday	. 13	Third Seal—Motions.
Monday	. 15	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Tuesday	. 16	
Wednesday	. 17	
Thursday	. 18	Fourth Seal—Motions.

Friday . . .	19	} Pleas, Demurrers, Ex- ceptions, Causes, & Further Directions.
Saturday . .	20	
Monday . . .	22	
Tuesday . .	23	} Fifth Seal—Motions.
Wednesday .	24	
		} Petitions.

His Honor the Vice Chancellor will hear Motions at Lincoln's Inn, in the interval between the last day of Term and the First Seal.

### ROLLS SITTINGS.

In the interval between the 27th November and the 4th December, the Master of the Rolls will sit for as many days as may be necessary to dispose of the Motions remaining unheard at the end of the Term.

No causes after the 27th instant till the 5th of December.

### EXCHEQUER (EQUITY).

#### *Gray's Inn Hall.*

Wednesday . Nov. 26	} Motions, and Paper of General Busi- ness.
Thursday . . . 27	
Friday . . . 28	} Paper of General Busi- ness. Motions.
Saturday . . . 29	
Monday . . . Dec. 1	} Motions, and Paper of General Busi- ness.
Tuesday . . . 2	
Wednesday . . 3	} Petitions under Acts of Parliament, and Tithe Causes.
Saturday . . . 6	
Monday . . . 8	
Thursday . . . 11	
Friday . . . 12	

### KING'S BENCH SITTINGS.

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	<i>Common Juries.</i>
Wednesday, Nov. 26	Thursday . Nov. 27
Friday . . . 28	Tuesday . Dec. 16
and daily to	(the Adjournment day)
Friday . . . Dec. 5	and daily to
	Thursday . Dec. 18
<i>Special Juries.</i>	<i>Special Juries.</i>
Saturday . Dec. 6	Friday . Dec. 19
and daily to	and daily to
Monday . . . 15	Tuesday . Dec. 23
(inclusive).	(inclusive.)

### COMMON PLEAS

MIDDLESEX.	LONDON.
<i>Common Juries.</i>	<i>Common Juries.</i>
Wednesday . Nov. 26	Thursday . Nov. 27
Friday . . . 28	Wednes. (adjourn- ment day) Dec. 10
Saturday . . . 29	Thursday . . 11
Monday . . . Dec. 1	Friday . . . 12
	Saturday . . 13
<i>Special Juries.</i>	<i>Special Juries.</i>
Tuesday . . Dec. 2	Monday . Dec. 15
Wednesday . . 3	Tuesday . . 16
Thursday . . . 4	Wednesday . . 17
Friday . . . 5	Thursday . . 18
Saturday . . . 6	Friday . . . 19
Monday . . . 8	Saturday . . 20
Tuesday . . . 9	Monday . . . 22
	Tuesday . . . 23

### EXCHEQUER OF PLEAS SITTINGS.

MIDDLESEX.	
Wednesday . Nov. 26	} Revenue and Common Juries.
Friday . . . 28	
Saturday . . . 29	} Ditto.
Monday . . . Dec. 1	
Tuesday . . . 2	} Common Juries.
Wednesday . . 3	
Thursday . . . 4	
Friday . . . 5	
Saturday . . . 6	
Monday . . . 8	} Special Juries.
Tuesday . . . 9	
Wednesday . . 10	
Thursday . . . 11	
Friday . . . 12	} Common Juries.

### LONDON.

Thursday . Nov. 27	} Common Juries.
Saturday . Dec. 13	
(Adjournment day)	
Monday . . . 15	
Tuesday . . . 16	
Wednesday . . 17	} Special Juries.
Thursday . . . 18	
Friday . . . 19	
Saturday . . . 20	
Monday . . . 22	} Common Juries.
Tuesday . . . 23	

The Court will sit at Ten o'clock.

## FURTHER LIST OF PERPETUAL COMMISSIONERS,

Under 3 &amp; 4 W. 4, c. 74.

## SOMERSETSHIRE.

Thomas Nicholls	-	Axbridge.
Robert Leigh	-	{ Bardon, near Taunton.
John William Trevor	-	{ Bridgwater.
Joseph Ruscombe Poole	-	{
Edward Dyne	-	- Bruton.
Thomas Edward Clarke	-	{ Chard.
Charles Benjamin Tucker	-	{
Isaac Sparkes	-	- Crewkerne.
John Draper	-	{ North Down, near Crewkerne.
Alfred Whitaker	-	{ Frome.
Christopher Moresby	-	{
Richard Periam Prat	-	- Glastonbury.
Henry Tuson	-	- Ilchester.
John Baker	-	- Ilminster.
Nicholas Broadmead	-	{ Langport.
John Samuel Warren	-	{
Francis Seymour	-	- Mere, Wiltshire.
John Payne	-	- Milverton.
Francis Bastone	-	- Minehead.
John Pyne	-	- Somerton.
Edwards Beadon	-	{
William Pryce Pinchard	-	- Taunton.
William Kinglake	-	{
Edward Coles	-	-
Frederick White	-	- Wellington.
Uriah Messiter	-	- Wincanton.
Philip Hancock	-	{ Wiveliscombe.
Henry Dawbney Harvey	-	{
John James	-	- Wrington.
Francis Theophilus Robins	-	{
John Batten	-	- Yeovil.
John Slade	-	{
John English	-	-
Thomas Cruttwell	-	{
William Briscoe	-	-
Philip George	-	{ City of Bath.
Robert Savage	-	{
John Langley	-	-
Henry Mant	-	-
Robert Clarke	-	-
Arthur Palmer	-	-
William Draper Brice	-	{
William Tanner	-	-
Brooke Smith	-	-
Isaac Cooke	-	{ City of Bristol.
Andrew Livett	-	{
Jeremiah Osborne	-	-
Lionell Oliver Bigg	-	-
John Bush	-	-
John Daniell	-	-
Edward Parker	-	{ Banwell, near Bristol.
Joseph Lovell Lovell	-	{
Robert Davies	-	-
William Parfitt	-	{ City of Wells.
Henry Brookes	-	{

\*. We shall be glad to receive similar lists from the other counties, corrected to the present time.

## ANSWERS TO QUERIES.

## COMMON LAW.

## ACCOMMODATION BILL. P. 48.

1. The acceptor or drawer is clearly liable to a *bona fide* holder of an accommodation bill who has given value for it, although he knew it to be an accommodation bill at the time he took it.—See Chitty on Bills. *Vere v. Lewis*, 3 Term. Rep. 183; *Masters v. Miller*, 4 T. R. 339, and several other cases there cited; for as Mr. Chitty observes, the very object of an accommodation acceptance is to enable the party accommodated to obtain money on credit from a third person, and therefore the want of consideration furnishes no defence to one who has advanced the money on the credit of the acceptor, though he may have been defrauded by the drawer. See *Smith v. Knox*, 3 Esp. Rep. 46, and Lord Eldon's judgment in that case. The obligation of the acceptor is *irrevocable*.—*Trimmer v. Odity and others*, tried before Lord Kenyon, 12th July, 1800. See also *Thornton v. Dick*, 4 Esp. Rep. 270. The acceptor is always primarily liable to pay the bill, and the drawer and indorsers are liable on his default.

J. S.

2. Although the holder of a bill had notice when he took it, that the acceptor had only accepted it for the accommodation of the drawer, yet the acceptor is bound to pay it, and nothing can discharge him but payment or a release. *Ireland (Bank) v. Beresford*, 6 Dow. 237.

S. D.

## LAW OF LANDLORD AND TENANT.

## DEVISE.—LIFE NOT IN BEING. P. 495, VOL. 8.

J. J. A. C. will perceive, on reference to *Beard v. Westcott*, 5 Taunt. 393, that it was held an executory devise was good, though it was not to take effect till the end of an absolute term of 21 years after a life in being at the death of the testator, without reference to the infancy of the person intended to take. In *Fearne on Contingent Remainders*, 495, ninth edition, it is laid down, "that an executory devise, whether to a person *in esse* or not, is good, if confined to take effect within the period of a life or lives in being, and 21 years after." There can be no doubt therefore that the devise to E. F. is valid.

SPES.

## QUERIES.

## COMMON LAW.

## VERBAL AGREEMENT.

A., the proprietor of a house, agrees, verbally, to let the same to B. upon certain terms, provided the references B. gave to A. were satisfactory. A. having, from some cause or other, altered his mind, rejects B. as a tenant,

without making any inquiry as to his responsibility. Can *B.* compel *A.* to accept him as a tenant? and in what manner should he proceed?  
CH.

#### PAUPER'S SETTLEMENT BY ESTATE.

An important question arises on the construction of the 68th sec. of the New Poor Law Amendment Act. If a man, having gained a settlement by estate under the previously existing laws, and having disposed of his estate before the passing of the act, should have been living more than ten miles from the parish in which his estate was situated at the time the act passed, or should at any time thereafter remove beyond ten miles from such parish,—does he thereby lose such settlement? In other words, is the clause of the act referred to retrospective in its operation, and does it take away a previously established and completed settlement as in the above case, or must a settlement of estate be gained under the act (by a forty days residence in the parish) before it can be abolished by the 68th section?

W. C. H.

#### Practice.

##### ABATEMENT OF ACTION.

*A.* brings an action against *B.*, who is duly served with the writ, when, shortly afterwards, and before declaration, *A.* (the plaintiff) dies. Does this abate the action, and must the executors proceed *de novo*? or can the executors now continue the action, and declare in their own names, as executors, suggesting the death of their testator?  
J. S.

#### Law of Property and Conveyancing.

##### COPYHOLD ESTATE.

*A.* is the purchaser of a copyhold estate; the vendor of such estate was never admitted to a small portion of it, nor was the person of whom he purchased, so that upwards of twenty years have elapsed, and still possession is, and has been kept, without any obstruction or interference whatever. Will *A.* be justified in treating the property as freehold? and will the fact of the having had possession for so long a period give him a good title? It is presumed the possession is adverse.  
X. X.

##### DEVISE, EXECUTORY OR CONTINGENT.

"I do give said house and lands to Sarah, the wife of *A. B.*, for the term of her natural life; and after her decease I do give the said house and lands to Mary, her daughter, for the term of her natural life, and after her decease, to her *eldest child* then living, whether son or daughter, I do give said premises to him or her, to his or her heirs and assigns for ever." This property now belongs to Mary, who has a son, and she has levied a fine: Will such fine bar the son's right after her decease?  
X. Y. Z.

## THE EDITOR'S LETTER BOX.

*The Legal Almanack and Remembrancer*, now nearly ready for publication, will contain Lists of the Judges and Officers of all the Courts at Westminster, and such of the Local Courts as are interesting to the Profession in general.—The Officers of both Houses of Parliament.—A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices; the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c.—The hours of attendance at the Common Law, Equity, and other Offices, carefully ascertained.—The Terms and Returns of Writs.—Barristers, with the date of their call, and Regulations of the Inns of Court.—Members of the Incorporated Law Society, with the regulations for admission.—The Circuits.—The Quarter Sessions;—Aldermen and Law Officers of the City.—The Police Magistrates and Commissioners; and various other Tables of professional utility.

Information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers, will be carried down to the latest time.

The question put by "Juvenis" is not a point of law. In order to find out the party, he should advertise, and our Publishers will attend to the insertion.

The Queries and Answers of "Enquirer;" L. I. F.; 3; "A Young Student;" R.; D. W. C.; X. Y.; and "A Constant Reader;" have been received.

We always regret excluding the well-meant labors of our Correspondents, but should prefer that the Queries were confined to "*knotty points*."

The suggestion of C. B. B., regarding the proposed New Courts, will probably be inserted next week.

The hint of a Correspondent as to Lectures, he will observe, has been attended to.

We have already noticed sufficiently the subject of Progressive Stamp Duties: our Correspondent H. H. will find that the Letters he refers to were answered at the time.

We thank a Correspondent for the Lancashire List of Perpetual Commissioners, which shall be inserted the first opportunity, and shall be glad to receive those of other counties to the *present time*.

The several communications of J. A. M., shall receive our early attention.

The paper of R. S.—t is acceptable, and will be inserted next month.

The practical point stated by S. W. shall be attended to.

# The Legal Observer.

Vol. IX.

**SUPPLEMENT  
FOR NOVEMBER, 1834.**

No. CCXL.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”  
HORAT.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

### MR. WILDE'S INTRODUCTORY LECTURE ON CONVEYANCING.

The Course of Lectures on Conveyancing commenced on Monday the 3d instant, when Mr. Wilde delivered an Introductory Lecture on the Study of the Law, of which the following is a brief outline:—

He observed that no lectures could supersede the necessity of study, or do more than *assist* the student in his progress. They could not effectually communicate knowledge, but only stimulate to its acquisition. There were, as Gibbon had observed, two kinds of education:—the first was given: the second acquired; and it was the latter which was the most valuable. The capacity of the student to acquire knowledge, and the means best suited to that capacity, deserved particular attention; for many subjects were presented to the mind in a way too indistinct to be remembered. If that which is offered bear no relation to what we have already learnt, it makes but little impression, and speedily passes away.

During two hundred years various Works had appeared on the Study of the Law; but in general they gave false views, and proposed schemes which could not be carried into effect. It had been said, that all other branches of knowledge were comprehended in the science of the Law. The writers on this subject generally abounded with descriptions of its vast extent, and the wide field of learning necessary to be cultivated by the accomplished Lawyer.

The learned Lecturer then proceeded to

point out the absurdity of directing the articled clerk to undergo any very laborious study of Grotius, Puffendorf, Vattel, and other jurists. The course which was recommended by these writers was too vast for human industry. To make a perfect Lawyer was as difficult as to form the Poet described in *Rasselas*: he must know all nature, and every art and science, and acquire all the embellishments of literature.

For the Solicitor, it was not necessary to enter on so extensive a range of study. A liberal education, however, must be supposed. His attention, for the larger part of the day, would necessarily be directed to the *Procedure* of the Law—to attaining a perfect knowledge of the forms and modes of transacting legal business; and for the rest, he should be occupied in the study of such works as would instruct him in the general principles of the Law, and the reasons on which it was founded.

It was material to attend to the best order of proceeding; and perhaps no better instruction could be given than the following:—first to do what *must* be done; next to do what *may* be done; and, lastly, to do what you *please*. It was not desirable to read a great number of books, for the superfluity would only operate as a burden on the memory. The importance of a strict attention to the *method* of study was strongly enforced. A general view of the whole system was first to be gained, and the leading decisions of the Law well fixed in the mind. One general consideration, not to be lost sight of, was, that the materials of which the Laws of England were framed, and the manner in which they were adopted, were peculiar to this country. Part of these materials were of foreign origin, and of part the source could

not be distinctly traced. The foundations of the Laws of England were not laid at any definite time: they were not formed on any general or comprehensive plan, like those of Justinian, or any other Code known to the nations of the Continent. They were the result of the wisdom and experience of many men in many ages.

The best mode of study was, to consider the Law with reference to facts, without which it was impossible to work out principles; and hence the combination of study and practice was the most beneficial. It was difficult to state which was the best, but it was manifest that some *method* was necessary to preserve the remembrance of knowledge. Though we might not be able to state what was the best course for students in general, this was at all events certain—that any method, if adhered to, was better than none. The Student would apply the materials before him to his own peculiar views, and at length succeed in impressing them permanently on his mind.

It was essential, in studying a new science, as in travelling a new country, to have some map by which the course might be guided; and in this respect a Lecturer might be of great assistance. He should direct the Student, in the first place, to consult those works which afforded some general notions of the Law. He might commence with the Analysis of the Law by Sir Matthew Hale, to which Sir William Blackstone was so much indebted. He should then take up the Commentaries, by which his studies would be greatly facilitated, particularly in the sub-divisions of the subject, and the illustration of general principles. Next he would recommend Wright's Tenures to be read; then Sir M. Hale's History of the Common Law, and afterwards Mr. Butler's Notes. It was necessary to read parts only of some books, and to use others merely for occasional reference.—From the vast extent of the Law, and the multitude of treatises, it had now become absolutely necessary to resort to Abridgments and Digests.

Another point it was important to attend to, was the meaning of technical terms in the Law; and if there were no immediate opportunity to consult the authorities, they should be noted down as the subject of future inquiry.

The drudgery of Practice—as it might be considered,—the learning the forms of procedure, and the modes of conducting business, gave great advantage. If neglected in the early part of professional life, it would

rarely be acquired afterwards. The most brilliant attainments were often well exchanged for humble but useful qualities. It had been said that “business brings knowledge;” but there were some kinds of knowledge which could not be so well acquired as in the outset of the Student's career. Let it be remembered, that man had but one youth. The Spring was the time for sowing the seed, and if neglected, it was in vain to look for the harvest.

## LAW OF ATTORNEYS.

No. XXIII.

### NOTICE OF ADMISSION AND EXAMINATION.

THERE being some questions now before the Judges of the Courts, both at law and in equity, on the fitness of persons to be admitted as Attorneys and Solicitors, it may be useful to state the law on the subject:—

#### 1st. *As to the Notice of Admission.*

By a rule of the Court of King's Bench, in Trinity Term, 31 Geo. 3, (1791) every person who shall intend to apply for admission as an attorney in that Court, and who shall not have been admitted an attorney or solicitor of any other Court, shall for the space of *one full term previous to the term* in which such person shall apply to be admitted, cause his name and place of abode, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articulated, written in legible characters, to be affixed on the outside of the Court of King's Bench, in such places as public notices are usually affixed, and also in some conspicuous place in the chambers of each of the Judges of this Court, [this part of the rule is altered by the rule of Trin. 33 Geo. 3, which requires the notice to be entered in a book] and in the King's Bench Office; and that no person who shall not have regularly complied with this order shall in future be admitted an attorney of this Court.

The rule of Trinity Term, 33 Geo. 3, (1793) directs, that every person who intends to apply for admission shall for the space of one full term, previous to the term in which such person shall apply to be admitted, enter or cause to be entered in a book to be kept for that purpose at each of the Judge's chambers of this Court, his name and place of abode, and also the name and place of abode of the attorney or attorneys to whom he shall have been articulated, and that no person who shall not have complied with this rule shall in future be admitted an attorney.

Where there has been an assignment or assignments of the articles, the names of both or all the attorneys must be specified in the notices. See *Ex Parte Stokes*, 1 Chit. 556.

It is evident, from the number of notices thus required, and the long period which must elapse before admission, that the Courts intend to afford full opportunity for bringing forward any proper objections against the parties applying. In Chancery, however, as we lately pointed out, (p. 15) the notice of admission need not exceed twenty-six days, being the day before the Term for the day after.

#### 2nd. As to the Examination.

After the expiration of the five years, and due notice given, the person should be examined.

The 2 Geo. 2, c. 23, s. 2, enacts, that the judges of the said Courts respectively, or any one or more of them, shall, and they are hereby authorized and required, before they shall admit such person to take the said oath, to examine and inquire, by such ways and means as they shall think proper, touching his fitness and capacity to act as an attorney; and if such judge or judges respectively shall be thereby satisfied that such person is duly qualified to be admitted to act as an attorney, then, and not otherwise, the said judge or judges of the said Courts respectively shall, and they are hereby authorized to administer to such persons the oath hereinafter directed to be taken by attorneys, and after such oath taken, to cause him to be admitted an attorney of such Court respectively, and his name to be enrolled as an attorney of such Court respectively, without any fee or reward, other than one shilling for administering such oath; which admission shall be written on parchment in the English tongue, in a common legible hand, and signed by such judge or judges respectively, whereon the lawful stamp shall be first impressed, and shall be delivered to such person so admitted.

The following is the section as to solicitors in Chancery.

That the Master of the Rolls, or two of the Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of Lancaster, and the Judges of the said other Courts of Equity for the time being respectively, or any one or more of them, shall, and they are hereby authorized and required, before he or they shall admit any person to take the said oath, to examine and inquire, by such ways and means as he or they shall think proper, touching his fitness and capacity to act as a solicitor in such courts of equity respectively; and if the said Master of the Rolls, or two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the

Duchy of Lancaster, or the Judges of the said other courts of equity for the time being, or any one or more of them respectively, shall be thereby satisfied that such person is duly qualified to be admitted to act as a solicitor in such court of equity, then, and not otherwise, the said Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of Lancaster, and the judges of the said other courts of equity for the time being respectively, or any one or more of them shall, and they are hereby authorized to administer to such person the oath hereinafter directed to be taken by solicitors, and after such oath taken, to cause him to be admitted a solicitor in such court of equity, and his name to be enrolled as a solicitor in such court, without any fee or reward, other than one shilling for administering such oath, which admission shall be written on parchment in English, and in a common legible hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Exchequer, the Chancellor of the Duchy of Lancaster, and the Judges of the said other courts of equity respectively, or such of them who shall admit such person to be a solicitor, whereon a treble forty-shilling stamp shall be first impressed, and shall be delivered to the person so admitted.

It is well known that where there is no opposition to the party's admission, the Judges are accustomed to grant a fiat upon a certificate from the attorney of due service, by the clerk, and no personal examination before the Judges takes place.

'By an old rule of Michaelmas Term, 1654 — "It was provided, that the Court should once every year, in Michaelmas term, nominate twelve or more able and credible practisers to continue for the ensuing year, for the following purposes:

To examine such persons as should desire to be admitted attorneys, and appoint convenient times and places for the examination.

The person desiring to be admitted should first attend the prothonotary with his proof of service, then repair to the persons appointed to examine, and being approved, to be presented to the Court and sworn.

It appears that the practice of appointing examiners in pursuance of this rule was long continued; but owing to the negligent manner in which they were suffered to perform the office, it became obsolete prior to the 2 Geo. 2, (1730) since which time the Judges have not appointed examiners.

It having been found that the Judges cannot conveniently examine into the character and competency of persons applying to be admitted on the roll of attorneys and solicitors, it may be worth considering whether the practice under the old rule above referred to should not be revived by



appointing either the whole or part of the Committee of Management of the Incorporated Law Society to examine the articulated clerks applying for admission. It cannot be doubted that if an examination into the *practical* knowledge, at least, of the clerk were directed to take place, he would be stimulated to exert himself, the profession would become better instructed, and, ultimately, the public benefited.

We are not aware whether the gentlemen to whom we have alluded would undertake the duty, either in their collective capacity as the governors of the corporation, or whether a sufficient number of them individually might be induced to accept the labour and responsibility of the office; but we think that the performance of such a duty would be of the highest service to the profession and the community, and we thus throw out the matter for consideration. It appears clear that the Judges have power to appoint examiners, not only by the rule of M. T., 1654, but by the 2d sec. of 2 G 2, c. 23, under which they are "to examine and inquire *by such ways and means as they shall think proper*, touching the fitness and capacity," &c. of the applicant.

#### NOTES ON THE FRENCH COURTS OF JUSTICE.

23rd Dec., 1818.—Attended the assizes. A prisoner was brought up for horse-stealing. The President of the Court and three other judges were present, dressed in robes of scarlet, but without any flowing horsehair on their heads. The Procureur-Général, or public accuser on the part of the Crown, in the same costume, sat at the same table with the Judges, so close to the jury, that he was continually communicating with them in an under tone; and even during the defence, he from time to time suggested something aside to them, as it seemed, to do away with the impression of what was urged in the prisoner's favour. The jury consisted of the principal inhabitants of Toulouse, and of the professors of the university. The whole Court seemed to consider themselves as pitted against the poor devil at the bar. The President acted throughout as counsel against him; and even his manner, in the frequent cross-examination to which he made the prisoner submit, was what in England would be called unfeeling and indecent. Though the charge involved so serious a punishment, the Judges and Monsieur le Procureur seemed to think it a very facetious

circumstance, and laughed heartily when the culprit aided his own conviction by some ill-considered answer. Even the jury and the spectators seemed to be without any feelings of sympathy for the accused, and the address of his counsel was not listened to with a decent attention by any body;—though it ought to be added, in their excuse, that the address was a villainously stupid one. Still it was impossible not to be shocked at the apparent want of fair play in the whole procedure. The spirit of equality which pervades every thing in France since the revolution, seems to have found its way into the courts of justice in some of their observances; and in these instances, at least, we cannot condemn its influence. The prisoner and the witnesses are accommodated with seats, not as matter of favour, but as matter of right; and the witnesses give their evidence sitting. This is surely nothing more than just; it is a sufficient evil that a man, without any fault of his own, should be liable to the inconvenience of attending as a witness, without being subjected to the additional punishment of standing up in a witness-box, during an examination of as many hours as it may please the counsel to inflict upon him. The witness is not sworn upon the Bible; but he holds up his hand, and to the charge of the President—*Vous jurez, sans haine, et sans crainte, de dire la vérité, toute la vérité, et rien que la vérité*—he answers—*Je le jure*. No evidence was taken down; and the summing up of the Judge was only a recapitulation of the proofs against the prisoner. The jury retire to deliberate, and bring in their verdict in writing. The prisoner was found guilty, and sentenced to five years imprisonment.

29th Dec., 1818.—Assizes again. A very interesting trial of a man for shooting at another, with an intent to kill him. Before the commencement of the trial the names of the witnesses are called over; and they are sent out of court, that one may not hear the evidence of the other. The President opened the case to the jury. The proof was defective; at least, it was a very nice case as to the identity of the man; and yet one of the questions of the Procureur-Général to the prisoner, in a cross-examination in aid of the proof against him, was—Are you possessed of a gun? No evidence was taken down. When the evidence closed, the Procureur-Général spoke in support of the prosecution; the prisoner's counsel then spoke in his defence; and lastly, the President summed up, remarking in this instance upon what had been advocated on both sides; but still it was the speech of an advocate against the prisoner, in which character the French Judge seems to consider himself. In the course of this trial the President examined the witnesses for the prosecution, as to the character of the prisoner, in this sort of way: Do you know any thing of the prisoner's character? Have you ever heard any thing against him? Do you think it likely from what you have known of him, that he would commit the crime with which he is charged?

In another trial, the Judge, in his opening of the case, in order to influence the jury against the prisoner, commenced his speech by telling them—that the same culprit had very lately appeared at the bar, and had been acquitted by the jury on the score of his youth, as he was only one day beyond the age which made him liable to legal penalty; and that, in addition to this lenity, the jury had made a subscription for him, in order that he might have something with which he might begin the world again. This was the opening statement of the Judge, unsupported by a tittle of evidence.

So much for the criminal jurisprudence of the French; of the very first principles of which they seem to be utterly ignorant. The golden maxim of the English law, which presumes that every man is innocent till it has been proved that he is guilty, and which shields the accused from the obligation of replying to any question, lest he should criminate himself, has no influence in their criminal procedure. The prisoner, though not absolutely stretched upon the rack, is subjected to the terrible screw of cross-examination, and a most powerful engine it is for extracting the truth. But it may sometimes confound the innocent as well as convict the guilty. If indeed a prisoner be really innocent, and if he have coolness and good sense enough to adhere strictly to the truth, he may have nothing to fear from the legal inquisition of the French—which is certainly well adapted for unravelling the intricacies of a complicated case. But as it is surely better that many guilty should escape rather than one innocent man should suffer, the spirit of the English system is infinitely preferable, in spite of the facilities it affords to the clever rascal of escaping from justice.—*From the Diary of an Invalid*, by Henry Matthews, formerly of King's College, Cambridge.

## THE LATE LORD CHANCELLOR'S RETIRING SPEECHES.

THE retirement—or rather the removal—of Lord Brougham from the office of Lord Chancellor, is an event sufficiently memorable to induce us to record the speeches made by his Lordship prior to his surrender of the Great Seal, and his last remarks on the day of his calling and leaving it for his Majesty.

On Monday the 17th of November, after the Lord Chancellor had disposed of one or two motions of no public interest, Sir Charles Wetherell entered the Court.

The Lord Chancellor immediately addressed the Learned Counsel in nearly the following words:—"Sir Charles Wetherell, seeing you

in Court, I will take this opportunity of alluding to the important case of the *Attorney General v. Shore*, which relates to Lady Hewley's charity, as, under the present circumstances of the Administration, I consider it necessary that some arrangement should be made. In the first place, however, I beg thus publicly to state that I mean to, and will give up the great seal—I say emphatically that I *will* give up the great seal—and I now say so in order to remove all doubt, if any doubt could remain on the subject. There is not the least doubt or hesitation in my mind but that the great seal will go from my hands as soon as it is possible for me to discharge what remains of my official business. I have (said his Lordship very emphatically) been utterly amazed, astonished, and indignant at any person or persons presuming to doubt that such was my intention. There is no part of my public life which gives any individual a right to slander me by doubting that, under circumstances like the present, I should hesitate for one moment as to the course I shall pursue; and I again repeat, that I shall give up the great seal instantly. I am, however, it must be remembered, bound in justice to the suitors of the Court to remain in office until I have put them into the situation in which they ought to be. I, therefore, certainly shall remain until I have given judgment in the cases that have been argued before me, and I cannot do this in a hurried manner. The consequence of my not giving judgment on these cases would be nothing more nor less than this—putting the parties to the expense of a re-hearing before my successor. I think that I shall be able to give all these judgments in the course of three or four days. I cannot, however, as I said before, hurry them, as such a course would be highly inexpedient to the cause of justice. I therefore calculate that by Friday or Saturday at latest—it may be sooner—I shall give up the great seal. The case of the *Attorney General v. Shore* weighs much on my mind, as I consider it a case of vast importance, and after having heard so much of the argument, during which I was assisted by two Learned Judges of the Courts below, I shall exceedingly regret leaving office without disposing of it. Besides, it would be unfair to my successor were I so to do, for he must rehear all the lengthened arguments which I have paid the greatest attention to. I therefore propose to hear the conclusion of the argument, and strongly recommend all the parties to bind themselves to take my judgment after I have left office with or without reasons."

The *Solicitor General*.—I suppose, my Lord, that if the parties agree to this course, it will not preclude them from an appeal to the House of Lords.

The *Lord Chancellor*.—Certainly not. I am most anxious, however, they should agree to take my judgment, as, if the case should come on for a re-hearing before my successor, they may possibly on that occasion lose the able assistance of Sir *Edward Sugden*.

Sir *Charles Wetherell* was obliged for the suggestion of his Lordship, and, as far as he

brought up to the chamber, the prisoner answered, it should not enter there, for he had died more like a beast than a man; and that it was brought to a cellar within the close, where was very little light. That she heard the prisoner cry and lament when his father's body was found, but saw no tears. That he would have forced his father's chamber door open, but the key being found he entered, and took the gold and money out of his pocket, and then searched the cabinet; that, within an hour after his father was brought from the water he got the buckles of his shoes, and put them in his own. That a short time before Sir James died, his lady having fallen into a swoon, and afterwards telling the prisoner he was likely in a short time to lose his mother, he answered in the deponent's hearing, that his father should be dead first. That two nights after Sir James's death, the lady told this deponent that she heard the prisoner had vowed his brother's death, and little less as to his father, upon his hearing Sir James was about to settle his estate upon his brother: and, that the lady renewed the same expression to this deponent at Edinburgh, and added, what if they should put her bairn in prison."

Proof was given of the state of the body, and the College of Physicians at Edinburgh, having, at the desire of his Majesty's advocate, considered the report of the surgeons, delivered their opinions, that there was sufficient grounds to believe that Sir James Stansfield was strangled and not drowned. A boy of the age of thirteen was examined,—the Court, however, not admitting the evidence, but at the desire of the jury permitting it to be heard. It was as follows:—

"James Tomson declared, that Janet Johnston came to George Tomson's (his father's) house, between nine and ten o'clock that night Sir James was killed, and that the prisoner came thither soon after. That the declarant's mother ordered him (witness) to go to bed, which was in the same room, and beat him because he did not go presently. That Anna Mark, the said Janet's daughter, came for her to give her child suck, but that Janet staid a considerable time after, and whispered with the said George Tomson, and the declarant says further, that he heard the prisoner complain, that his father would not give him money, and prayed the devil might take his father, and God damn his own soul if he should not make an end of his father, and then all would be his, and he would be kind to them. Declared Philip Stansfield and Janet Johnston went away about eleven o'clock, and soon after his father and mother came to bed. But the declarant perceived his father and mother rose afterwards in the night, and went out of the house, and staid away an hour and half, or two hours. That his mother came in first, and the declarant pretended to be asleep

when they returned, and that he heard his father say, the deed was done, and that the prisoner guarded the door with a drawn sword and a bended pistol, and that he never thought a man would have died so soon; and that they carried him out to the water-side, and tied a stone about his neck; and leaving him there, they came back to the little kiln, and considered if they should cast him in the water with the stone about his neck or not, and whether they should cast him in far, or near the side; and at length they returned, and took away the stone from about his neck, and threw him in the water; and his father said, he was afraid, for all that, that the murder would come out. And his mother said, hout fool, there is no fear of that; it will be thought he has drowned himself. Declared, that when Sir James was found in the morning, his mother said to his father, rise quickly, for if you be found in your bed, they will say that you have a hand in the murder. Declared, that the coat and waistcoat Sir James had on in the water, being sent to their house, his mother said, she was frightened at it, and desired his father to send it away; that his mother said she was afraid to stay in the house in the evening, and therefore went out with his father, if he went out, ever since Sir James died, which she did not use to do before."

The Rev. Mr. Bell deposed that "the day before Sir James died, he accompanied him from Edinburgh to his house at New Milns; and both by the way, and at supper, his discourse was rational and pertinent. That after supper, Sir James went with the deponent to his chamber, and staid with him until ten o'clock; and he discerned nothing but sound judgment in what he said.

"That the deponent awoke in the night, and heard a great din and confused noise of several voices, and sometimes of persons walking, which frightened him, and put him upon bolting his chamber door faster; that he still heard the voices, but not so plain, till they came about to the chamber window, and then he heard the voice as high as before; whereupon he rose again, and would have looked out of the window, but could not open it: that it looked into the garden and the water, whither the voices went, till he heard no more.

"That he told the woman who came to light his fire in the morning, that he had rested little, through the noise he heard; and that he was sure there were evil spirits about the house that night. That about an hour after day, the prisoner came to the deponent's chamber, and asked, if Sir James had been there that morning? and said, he had been seeking him on the bank of the water, and immediately went down stairs again. That the deponent followed to see what he meant, and one came running, and said, they had found Sir James lying in the water; which so astonished the deponent, that he returned trembling to his chamber, and soon after took horse.

"That the deponent returning in the evening, advised the prisoner to have the corpse viewed by his friends and physicians; but he went and buried Sir James that night, without acquainting the deponent, or the honest men of the neighbourhood."

"James Murehead, surgeon, deposed, that upon the prisoner's assisting to lift the body, after it had been sewed up, and clean linen put on, it darted out blood through the linen, from the left side of the neck, which the prisoner touched: but that when the deponent, and the other surgeon put on the linen, and stirred and moved the head and neck before, he saw no blood at all."

It was urged by Sir Patrick Home, in the prisoner's defence, that,

"As to his firing pistols at his father in 1683 and 1684, it might be proved there was an entire friendship between him and his father at that time: but if those facts were true, as they had been pardoned by the act of indemnity, so they could not be made use of as instruments now, to infer that he was guilty of this murder.

"That as to the corpse bleeding when the prisoner touched it, it was a superstitious observation, founded neither upon law nor reason: and quoted *Corpus ovius* and *Mattheus de Criminibus* to be of the same opinion: and said, the bleeding was occasioned by the moving of the body, and the incision the surgeons had made; and that other people touching the body at the same time, it could no more be ascribed to the prisoner than to them.

"That the other circumstances laid in the indictment were but idle stories, for that it could be proved the prisoner went to bed in his own chamber that night his father was murdered, and did not stir out of his bed till called up by his father's servant next morning."

The King's Advocate replied that, "although it is said, the son threatening to cut his father's throat was but a remote circumstance, and that it could not be concluded from thence that he had actually murdered him; yet he thought it such a circumstance, that unless the prisoner could shew that some other person killed him, he must be reputed the murderer. That as the body bleeding, although several persons touched it, none of their hands were besmeared with blood but the prisoner's; and that the body having lain two days in the grave in a cold season, the blood must naturally be congealed. That the lifting about the body, and even the incision that was made, causing no such effusion before but only of some water or gore, and should upon the prisoner's first touching it begin to bleed afresh; he must ascribe it to the wonderful Providence of God, who in this manner discovers murder; especially since no natural reason could be assigned for it; and that the horrible impressions it made on the prisoner, notwithstanding his resolution to the contrary, might be urged as another argument of his guilt.

And that although Sir James Stansfield was melancholy and frantic in the year 1679, yet, he was known to have recovered his health, and to be of a composed, sedate temper of mind for several years past, and so capable of business as to be entrusted by the wisest men of the kingdom; nor at the time of his death had any sickness or returning frenzy upon him: besides, it appearing plainly that he was strangled, it could not be presumed that he afterwards walked out and drowned himself. And as to the prisoner surrendering himself, it was indeed suitable to the rest of his impudence, and he might imagine by that means to make the world believe he was innocent."

The Assize found the prisoner guilty, and the lords of justiciary ordered him to be hanged on the 15th of February, at the cross of Edinburgh, and his tongue to be cut out for cursing his father, and his right hand to be cut off for the parricide, and his head to be put upon the East Port of Haddington, as nearest to the place of murder, and his body to be hung up in chains betwixt Leith and Edinburgh, and his lands and goods to be confiscated for the treason. All this was rigorously put into execution. "Some thought," says Lord Fontainhall, a contemporary judge, "if not a miraculous, yet an extraordinary return of the imprecations was the accident of the slipping of the knots on the cross, whereby his feet and knees were on scaffold, which necessitated them to strangle him, bearing therein a near resemblance to his father's death; and a new application having been made that they might be allowed to bury him, Duke Hamilton was for it, but the Chancellor would not consent, because he had mocked his religion; so his body was hung up, and some days after being stolen down, it was found lying in a ditch among some water, as his father's was; and by order was hung up again, and then a second time was taken down."

## LIST OF PRIVATE ACTS,

PRINTED BY THE KING'S PRINTER, AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

1. An act for amending an act of the eleventh year of the reign of his late Majesty King George the Fourth, intituled, "An act for inclosing lands in the tithings of Arle and Arleston otherwise Allstone in the parish of Cheltenham in the county of Gloucester, and for discharging from tithes lands in the said tithings."

2. An act for inclosing lands in the parish of Tisbury in the county of Wilts, and for dividing the said parish into three parishes.
3. An act for inclosing lands in the parish of Great Shelford in the county of Cambridge, and for commuting the tithes of the said parish.
4. An act for inclosing lands in the parish of Duntsborne Rouse in the county of Gloucester, and for exonerating from tithes the lands in the said parish.
5. An act to effect a partition of the advowson of the vicarage and parish church of Cock-erham in the county palatine of Lancaster, and to confirm the sale of the next turn or right of presentation thereto.
6. An act for more effectually vesting in the feoffees acting under the will of Isaac Bow-cock certain estates in the county of York, held for certain charitable uses applicable within the parish of Keighley in the said county, and for confirming certain leases, covenants, and contracts of sale already made as to parts of such estates, and authorising the granting of building leases and the sale of other parts of such estates.
7. An act for enabling the dean and chapter of the cathedral church of Saint Paul in London, and their successors, to grant licences for building upon and improving the copyholds within the manor of Sutton Court in the parish of Chiswick in the county of Middlesex, and to grant licences to demise such copyholds for those purposes, and to fix the fines payable upon admission to the same during limited periods.
8. An act for vesting estates belonging to Eleanor Anne Julia Hunt Grubbe, spinster, an infant, in trustees for sale, and for laying out the money arising from such sale, under the direction of the High Court of Chancery, in the purchase of other estates, and for granting leases of the estates to be purchased; and for other purposes.
9. An act to commute for a corn rent certain tithes within the parish of Kirkby Lonsdale in the county of Westmoreland.
10. An act for inclosing lands in the parish of Dalwood in the county of Dorset.
11. An act for inclosing lands in the parish of Middleton in Teesdale in the county of Durham.
12. An act for dividing, allotting, inclosing, and otherwise improving the open fields, commons, and waste lands in the liberty of Kirk Langley in the county of Derby.
13. An act for inclosing and exonerating from tithes lands in the parish of Colmworth in the county of Bedford.
14. An act for inclosing, dividing, and allotting the commons, droves, banks, and waste lands in the parish of Elm in the Isle of Ely in the county of Cambridge.
15. An act for inclosing lands within the townships of Alstonefield, Warslow, Lower Elkstone, Fawfieldhead, Hollingsclough, Heathlee, and Quarnford, all in the parish of Alstonefield in the county of Stafford.
16. An act for inclosing lands in the parish of Chipstable in the county of Somerset.
17. An act to amend the corn rent schedules annexed to the award made in pursuance of an act of the fifty-second year of the reign of his late Majesty King George the Third, for inclosing lands in the parish of Longney in the county of Gloucester.
18. An act to commute for a corn rent the tithes and dues payable to the rectors and vicar of the parish of Kendal otherwise Kirkby Kendal in the county of Westmoreland.
19. An act for confirming and carrying into effect a partition and division of the real and personal estates of William Molyneux, Esquire, deceased, and for other purposes therein mentioned.
20. An act for facilitating the proof of the will of the Right Honorable Charles Henry Coote late Earl of Mountrath in certain actions in Ireland.
21. An act to enable the trustees of Hugh Montgomerie of Skelmorlie, Earl of Eglington, deceased, to sell a part of the trust estates, in order to extinguish the debts left by the said earl which affect or may be made to affect the said estates.
22. An act for settling and securing the lands of Potterfield, and parts of the lands, lordship, and barony of Elphinstone, in the county of Stirling, to and in favour of George Earl of Dunmore and the series of heirs entitled to succeed under a deed of entail made by the trustees of John Earl of Dunmore deceased, and under the conditions and limitations contained therein, and for vesting in lieu thereof the lands of Carrick, Innermuck, and others, in the county of Argyll, in the said George Earl of Dunmore and his heirs and assignees in fee simple.
23. An act to enable the trustees of George Viscount Keith deceased to sell certain lands vested in them in trust, and purchase with the price thereof the lands of Burnbrae; and to empower the heir of entail of the said lands of Burnbrae to dispose of the same; and for investing the price thereof in other lands, to be entailed to the same series of heirs.
24. An act to grant further powers of leasing part of the estates devised by and purchased pursuant to the will of Sir John Aubrey, Baronet, deceased.
25. An act for vesting part of the settled estates in the county of York devised by the will of Henry Peirse, Esquire, deceased, in trustees, upon trust to sell, and to apply the monies arising therefrom, under the direction of the High Court of Chancery, in the purchase of other estates to be settled to the same uses, with power to pay off incumbrances.
26. An act for exonerating estates in the counties of Somerset and Devon comprised in the marriage settlement of Sir John Palmer Acland, Baronet, deceased, from the jointure or rent-charge thereby limited to Dame Sarah Maria Palmer Acland, his widow, during her life, and for charging other estates in the county of Somerset devised

- and directed to be purchased by the will of the said Sir John Palmer Acland with the payment thereof.
27. An act for vesting certain detached estates devised by the will of the late Henry Charles Aston, Esquire, deceased, in trustees, upon trust to raise money for the purchase of an estate called the Dutton Estate, in the county of Chester, and for other purposes incidental thereto.
  28. An act for effecting an exchange of certain parts of the entailed estates of the Right Honorable Anthony Adrian Keith Falconer, Earl of Kintore, Lord Falconer, of Haulkerton, situated in the counties of Kincardine and Forfar, for certain lands belonging to Robert Taylor of Kirktonhill, Esquire, situated in the county of Kincardine.
  29. An act for inclosing lands within the parish and manor of Stanwick in the county of Northampton, and for extinguishing the tithes therein.
  30. An act for vesting certain estates situate in the parish of Herne in the county of Kent devised by the will of Edward Reynolds, Esquire, deceased, in trustees for sale, and for laying out the monies to be produced by such sale in the purchase of other estates, to be settled to the same uses.
  31. An act for vesting part of the settled estates of the Most Honourable George Augustus Francis Rawdon Hastings Marquis of Hastings and the Most Honourable Barbara Yelverton Marchioness of Hastings, Baroness Grey de Ruthyn, his wife, situate in the county of Warwick, in trustees for sale, and for laying out the money arising from such sale in the purchase of other lands, to be settled to the same uses.
  32. An act for vesting the estates in the counties of Surrey and Cornwall devised by the will of Matthew Russell, Esquire, deceased, in trustees, upon trust to sell the same, and to lay out the monies to arise from such sale in discharging incumbrances on other estates settled to the same uses, or in the purchase of other estates, to be settled to the same uses.
  33. An act to authorize the sale of lands settled for the perpetual augmentation of the curacy of Oldbury in the county of Salop.
  34. An act for inclosing commons and waste lands within the parishes of Mealiffe, Upper Church, and Temple Beg, in the county of Tipperary.
  35. An act for establishing a school on the site of Honey Lane Market in the city of London.
  36. An act for the relief of Patrick Richard Blackwood Brady and Richard Blackwood, Esquires, in respect of certain lands and premises, their estates, situate in the county of Cavan in Ireland.

PRIVATE ACTS, NOT PRINTED.

37. An act to enable James Thomas of Halifax in the county of York, gentleman, and his issue, to take and use the surname and arms of Berry.
38. An act for inclosing lands in the township of Raskelf in the parish of Easingwold in the north riding of the county of York.
39. An act for the naturalization of John Peter Segundo Mousley and Charles Edward Eugene Mousley.
40. An act for inclosing lands within the manors and tithings of Elwell otherwise Ridgeway and Stottingway within the parish of Upway in the county of Dorset.
41. An act to dissolve the marriage of John Allan with Jane his now wife, and to enable him to marry again; and for other purposes therein mentioned.
42. An act to enable Frederick Lumley Esquire to take and use the surname and arms of Savile.
43. An act for naturalizing Charles William Francken.
44. An act to dissolve the marriage of Isaac John Horlock Esquire with Phebe Horlock his now wife, and to enable him to marry again; and for other purposes therein mentioned.
45. An act for naturalizing Arthur Auguste de la Rive of Geneva, and William de la Rive, Jeanne Adele de la Rive, and Charles Lucien de la Rive, his children.
46. An act to dissolve the marriage of Henry Howell with Elizabeth his now wife, and to enable him to marry again; and for other purposes therein mentioned.

ATTORNEYS TO BE ADMITTED,

*Hilary Term, 1835.*

KING'S BENCH.

*Clerks' Names.*

*To whom attested.*

Andrew, George Hugo, Launceston, Cornwall.	Northmore Herle Pierce Lawrence, same place.
Archer, Goodwyn, Ely, Isle of Ely, Cambridge.	Thomas Archer, same place.
Armitstead, Robert, 1, Amwell Street, Claremont Square.	Edmund Haworth, Bolton-le-Moors, Lancaster.
Armstrong, William Matthew, 3, Rolls Buildings, Fetter Lane.	Henry Alington, Hertford.
Arnold, William, 41, Bedford Row.	Joseph Wagstaff, Warrington, Lancaster.

*Clerks' Names.*

Arrowsmith, Joseph, 6, Frederick's Place.  
 Aspinall, George, 1, Essex Court, Temple.  
 Bacon, John Edward, Ipswich.  
 Barker, John Hawksworth, Dartmouth Street, Westminster.  
 Baldwin, Richard, Grove Cottage, South Street, Greenwich.  
 Baynes, William Jones, Cardigan.  
 Beckington, Charles, Bow Church Yard.  
 Bell, Henry, 14, Gray's Inn Square.  
 Benett, William Morgan, Gower Street North.  
 Bennett, Rowland N., Francis Street, Bedford Square.  
 Bevan, Charles, Bristol.  
 Birkbeck, John Clarkson, of 9, Gould Terrace, Islington.  
 Binney, Edward William, Weststockwith, Nottingham.  
 Birch, Edward, Chatham, Kent.  
 Bowles, William, Abingdon.  
 Bradley, William Alexander, Cardiff, Glamorgan.  
 Brinsted, Charles Henry, Portsea, Hants.  
 Bullivant, George Haslehurst, Wilmington Square.  
 Bury, Henry, Manchester.  
 Busfield, Walker, Bradford, York.  
 Carruthers, William, Carlisle.  
 Chalk, Charles, Coleman Street.  
 Chamberlayne, Alfred F., 3, Oxford Terrace, Edgware Road.  
 Chapman, William Thomas, Biggleswade, Bedford.  
 Chatham, Edward, 18, Burton Crescent.  
 Coates, John, Darlington, Durham.  
 Cooke, Thomas Draper, Spilsby, Lincoln.  
 Cook, John, Scarborough, York.  
 Cookson, Daniel, 21, Compton Street, Brunswick Square.  
 Collins, Robert, Bristol.  
 Compigné, Horatio, 10, South Square.  
 Constable, Charles, 35, Myddleton Square, Pentonville.  
 Cooper, John Nelson, 6, Amwell Street, Pentonville.  
 Cox, Isaac John, Honiton, Devon.  
 Cox, George Henry Richardson, King's Lynn, Norfolk.  
 Croft, George Anderson, Stillington, York.

*To whom articulated.*

Henry Robert Eustatia Wright, Stockton, Durham.  
 John North, the younger, Liverpool.  
 Edward Pownall, same place.  
 William Barker, Huddersfield, York.  
 Robert Bickerstaff, Preston; assigned to Christopher Beverley, 1, Verulam Buildings, deceased.  
 James Morse, Carmarthen.  
 Henry Ingledew, Newcastle-upon-Tyne; assigned to Francis Seymour, same place.  
 Edwin Scott, Wigan, Lancaster.  
 Edward Lambert Newman, Cheltenham; assigned to John Jones (now John Jones Bateman), Lincoln's Inn.  
 John Jones (now John Jones Bateman), Lincoln's Inn.  
 William Bevan, Bristol.  
 Ottiwell Tomlin, Richmond, York.  
 Watson Byrchinshaw Thomas, Petersfield, Derby.  
 James Boys, Rochester, deceased; assigned to James Simmons, same place, deceased; assigned to Charles May Simmons, same place.  
 William Wayman, Bury St. Edmonds; assigned to Isaac Fryer, Wimborne Minster, Dorset.  
 Edward Priest Richards, Cardiff.  
 Reuben Hart, Portsmouth.  
 Thomas Turner Pearson, Crowle, Lincoln, assigned to Henry Thompson, Grantham; Lincoln.  
 Edwin William Sergeant, same place; assigned to Oswald Milne, same place.  
 William Wells, same place.  
 James Relph, same place, deceased; assigned to John Inman, Carlisle.  
 Thomas Freeman, Brighton; assigned to Thomas Hilton Bothamley, Coleman Street.  
 Henry Pellatt, Ironmongers' Hall, Fenchurch Street.  
 William Chapman, same place.  
 George Stephen, 17, King's Arms Yard, Coleman Street.  
 Francis Mewburn, same place.  
 Langley Brackenbury, same place.  
 Arthur Levett, Kingston-upon-Hull.  
 Joseph Frank, Stockton, Durham.  
 George Frederick Peters, Bristol.  
 David Compigné, Gosport, Hants.  
 Francis Smedley, 12, Ely Place.  
 Edmund Cooper, East Dereham, Norfolk; assigned to William Mason, Colchester.  
 Isaac Cox, Honiton, deceased; assigned to William Gribble, Barnstaple, Devon; assigned to Robert Henry Aberdein, Honiton.  
 John Sherborough Gell, Nottingham; assigned to John Sinckler Porter, Chester.  
 Edwin Smith, Leeds.

*Clerks' Names.*

Cufaude, John L., Halesworth, Suffolk.  
Cunliffe, Thomas Potter, Manchester.  
Culthorp, John George, Boston, Lincoln.

Darlington, John, Leeds.

Daubney, Joseph Heaford, Great Grimsby, Lincoln.

Davidson, Septimus, King William Street, London.

Davies, Charles, Shrewsbury.

Deardon, Peregrine R., Lincoln's Inn Fields.

De Lara, Michael Cohen, Chapel-en-le-frith, Derby.

Devereux, Pryce, Welch Pool, Montgomery.

Dodgson, James, Blackburn, Lancaster.

Dodson, Thos. G., 45, Kirby-street, Hatton-garden.

Dumville, John, 8, Wilmington-square.

Easton, William Lane, 3, Charlotte-street, Bloomsbury.

Edenborough, Bishop, Leyton, Essex.

Edmonds, George, Birmingham.

Eggington, Alfred, 10, Howland-street, Fitzroy-square.

Eyre, John, Portman-square.

Fenwick, John, the younger, Preston Villa, Tynemouth.

Flight, Thomas, Bridport, Dorset.

Forster, Grieve, 32, Alfred-place.

Foster, William, Settle, York.

Fryer, William, York.

Gatliff, Charles, 12, Tavistock-street, Bedford-square.

Goddard, Alfred, Edmund-place, Aldersgate-street,

Graham, John, 19, Saville-row.

Gray, William Gover, Saville-row.

Gregory, James Christopher, Odiham, Southampton.

Gurney, John Henry Badcock, Penzance, Cornwall.

Hall, Cheslyn, 16, New Boswell-court, Carey-street.

Hambly, Edmund, Trehurrock, near Camel-ford, Cornwall.

Hawker, Claudius Crigan, Stratton, Cornwall.

Hayes, Robert, St. George's-terrace.

Heathcote, Francis, 167, Strand.

Heathcote, William, Leek, Stafford.

*To whom articulated.*

John Cufaude, same place.

Robert Ellis Cunliffe, same place.

Henry Rogers, Boston.

Thomas Ives Brayne Hostage, Castle Northwick, Chester; assigned to Thomas William Tottie, Leeds.

Joseph Daubney, same place.

Henry Guest, Lawrence Lane; assigned to Benjamin Hardwick, same place.

Thomas Harley Kough, same place.

Richard Parsons, Mansfield, Nottingham; now with Charles Deane, Lincoln's Inn Fields, Agent to Mr. Parsons.

John Dixon, Sheffield; assigned to Wm. Bennett, of Chapel-en-le-Frith.

Richard Griffiths, same place.

John Dodgson, same place; assigned to Thos. E. Swift, same place.

Wm. Sharp, Lancaster; assigned to William Robinson, Lancaster; assigned to Hugh Baldwin, Lancaster.

Peter Williamson, Dumville, Manchester.

Messrs. Corydon, Plymouth.

Samuel Frederick Miller, Old Jewry.

John Palmer, same place; assigned to John Francis Dalby, same place.

Thomas Mander, Bakewell, Derby; assigned to James Mander, 9, Lincoln's Inn.

Walpole, Eyre, 22, Bryanstone-square; assigned to William Lechmore Whitmore, 11, Bedford-row.

George Waugh Stable, of Newcastle-upon-Tyne.

Edward Gill Flight, same place.

Henry Robinson Glaister, Bedale, York; now with Mr. Spence, Alfred-place, agent to Mr. Glaister.

George Dudgeon, Settle.

Thomas Walker, York; assigned to Edward Richard Anderson, York.

Charles Bischoff, 8, Copthall-court.

Charles Deane, Lincoln's Inn Fields; assigned to John Henry C. Russell, Sittingbourne, Kent.

William Alexander James, 29, Bucklersbury.

Robert Cook, Bath.

William Woodrow Maidman, Fareham, Southampton.

Francis Paynter, same place.

James Hall, same place.

Matthew Anstis, Liskeard, Cornwall.

Edward Shearm, same place.

Thomas Porrett Hayes, Bedford-row.

James Mogridge, Reading, Berks, deceased; assigned to James Alexander Frampton, New Inn.

John Heathcote, Leek, Stafford.



*Clerks' Names.*

Hill, Joseph Hickson, 5, Warwick-court, Holborn.  
 Hilleary, Gustavus Edward, Stratford, Essex.  
 Hillier, Thomas Baker, St. Lloyd's-square.

Hodding, Henry Reade, New Sarem, Wilts.

Holmes, James, Holmes-terrace, Kentish Town.

Hopkinson, George, the younger, Nottingham.

Holt, Henry Frederic, 67, Grosvenor-terrace, Westminster.

Hudson, John Godfrey Bellingham, 132, Oxford-street.

Hughes, Hugh, Aberystwith, Cardigan.

Humby, George, 24, New North-street, Queen-square.

Hunt, Francis, Wednesbury, Stafford.

Hustler, Charles Devereux, Halsted, Essex.

Hutchinson, William, 179, Great Surrey-street.

Jenkin, John Trevellian, Swansea, Glamorgan.

Jenkins, James Samuel, Clapham Common.

Johnson, Philip, Wallingford, Berks.

Jones, Isaac, Llanfyllin, Montgomery.

Jones, Charles Thomas, 35, East-street, Red Lion-square.

Jones, Thomas, 11, Serle-street, Lincoln's Inn.

Jones, Alfred, Size-lane.

Kincaid, Charles Henry, Ball Court, Cornhill.

King, Charles Allen, 14, South Square.

Latimer, John Edward, 8, Thavies Inn.

Lee, John, Brampton, Cumberland.

Long, William Cole, Windsor, Berks.

Marriott, Robert, 5, Islington Terrace.

Marsh, Sylvester, St. Helen's, Lancaster.

Marston, Thomas, Tavistock Street, Covent Garden.

Maurice, James, Marlborough, Wilts.

Meadows, Daniel Charles, 42, Crawford Street, Bryanstone Square.

Mendham, Wace Lockett, Norwich.

Meymott, Edward, 86, Great Surrey Street.

Moore, Samuel, 3, Upper Gough Street, Gray's Inn Road.

Moore, Anthony John, Edmund Place.

*To whom articulated.*

John Hill, Kingston-upon-Hull.

Robert George Augustus Hilleary, same place.

Henry Miller, Frome Selwood, Somerset.

John March Hodding, late of New Sarem, deceased; assigned to Henry Everett, same place.

Charles Shearman, South-square.

George Hopkinson, the younger, Nottingham; assigned to Gustavus Thomas Taylor, Featherstone-buildings.

Thomas Wight, 37, Percy-street, Fitzroy-square.

John Smart, Inner Temple.

John Hughes, same place.

Samuel Miller, Bedford-row.

James Hunt, Craven-street, Strand, deceased; assigned to Charles Hunt, Wednesbury, aforesaid.

Orbell Hustler, same place.

John Gregson, Durham; assigned to Edward Mantle, 179, Great Surrey-street.

David John Davis, Swansea; assigned to John Williams, same place.

Thomas Harvey, Egham, Surrey; assigned to Benjamin Aplin, Banbury, Oxford.

William Bowell Sheen, same place.

Richard Woodcock, same place.

Thomas Dax, the younger, 35, Lower Bedford-place.

James Smith, Maidenhead; afterwards a pupil with John Rudall, Esq., Lincoln's Inn.  
 William Brodrick, Bow Church-yard.

Charles Copley Whiteford, Plymouth; assigned to Robert N. Lucas, Warwick Court, Gray's Inn, and by him assigned to Thomas Gamlen, Fumival's Inn, and by him assigned to Joseph Shrimpton, Staple Inn.

Nathaniel Hooper, 5, Pump Court.

Henry Moore Griffiths, Birmingham; assigned to Campbell Wright Hobson, 4, Raymond Buildings.

William Carrick, same place.

William Long, same place.

Edward Farn, Gray's Inn Square.

John Barnes, same place.

William Bromley, Gray's Inn.

John Weeding, Reading, Berks.

Rolla Rouse, Woodbridge, Suffolk.

John Hindson Nixon, Norwich; assigned to Robert Wortley, same city.

John Gilbert Meymott, same place.

Christian Swann, Nottingham.

George Stephenson, Sunderland near the Sea, Durham.

[To be continued.]

## LIST OF NEW PUBLICATIONS.

Lectures on the Law of England, by R. Wooddesson, late Vinerian Professor in the University of Oxford. By W. R. Williams, D. C. L. Second Edition. 3 Vols. 20s.

Archbold's King's Bench Practice, By Chitty. Fourth Edition. 2 Vols. 1l. 10s.

Dowling's Practice Cases. Vol. II. Part IV. 12s.

Crabb's Conveyancer's Assistant. 2 Vols. 1l. 12s.

Bligh's Appeal Cases. Vol. VI. Part I. 9s.

Analytical Quarterly Digest to the Legal Observer. Vol. IV. Part IV. 2s.

## BANKRUPTCIES SUPERSEDED.

From Oct. 21, to Nov. 18, 1834, both inclusive, with Dates when gazetted.

Cattaral, Wm., and Wm. Hinde, Liverpool, Drysaltern and Oilmen. Oct. 24.  
Frankland, Christopher, sen., Susworth, Scotton, Lincoln, Maltster. Oct. 24.  
Hinde, Wm. Liverpool, Drysalter, Oil and Colour Merchant. Nov. 7.  
Lina, Augustus, Aylesbury, Bucks, Grocer. Nov. 18.  
Ramsden, Richard, Southend, Essex, Coachmaster and Horse Dealer. Nov. 4.

## BANKRUPTS.

From Oct. 21, to Nov. 18, 1834, both inclusive, with Dates when gazetted.

Appley, James, Newington Causeway, Borough, Tuscan and Straw Hat Manufacturer. *Foldhill*, King's Road, Bedford Row; *Johnson*, Off. Ass. Oct. 21.  
Ade, Michael, and Francis Berger, Lime Street, London, Merchants. *Abbott*, Off. Ass.; *Scott & Co.*, St. Mildred's Court, Poultry. Oct. 24.  
Almond, John, Pemberton, Lancaster, Woollen Draper and Tailor. *Adlington & Co.*, Bedford Row; *Gaskell*, Wiggin. Oct. 31.  
Allen, William Bryant, Clapton, Somerset, Tanner. Pais, Queen Square, Bloomsbury; *Sherry*, West Lambrook. Nov. 7.  
Buttenshaw, Samuel, High Holborn, Tea Dealer & Grocer. *Belcher*, Off. Ass.; *Amory & Co.*, Throgmorton Street. Oct. 24.  
Bailey, Richard, Wootton-under-Edge, Gloucester, Bookbinder. *Van Sanden*, Old Jewry; *Dyer*, Wootton-under-Edge. Oct. 28.  
Barlow, James Wilson, Liverpool, Coal Merchant. *Blackstock & Co.*, King's Bench Walk; *Deane*, Liverpool, Nov. 4.  
Bailey, Joseph, Spasholt, Hants, Cattle and Sheep Salesman. *Astie*, Devises; *Whitaker*, Gray's Inn Square, Nov. 7.  
Booth, John, New Sneynton, Nottingham, Stone Mason. *Assen & Co.*, Raymond Buildings, Gray's Inn; *Perry & Co.*, Nottingham. Nov. 11.  
Barnes, Joseph, Stratford-upon-Avon, Warwick, Carpenter & Inn Keeper. *Adlington & Co.*, Bedford Row; *Hobbes*, Stratford-upon-Avon. Nov. 14.  
Colling, Joseph, Yarmouth, Norfolk, Grocer and Tea Dealer. *Hutchinson & Son*, Jewin Street, Cripplegate. *Goldsmid*, Off. Ass. Oct. 21.  
Carr, William, Hexham, Northumberland, Money Scrivener, Banker, and Ironfounder. *Welford*, Hexham; *Forsters & Co.*, John Street, Bedford Row. Oct. 21.  
Cole, William, Chester, Builder. *Philpot & Son*, Southampton Street, Bloomsbury. *Potts & Co.*, Chester. Oct. 21.  
Cabitt, George, North Walsham, Norfolk, Lime Burner, Coal Merchant, and Carrier. *Utshank & Co.*, Norwich; *Lytchae*, Essex Street. Oct. 21.  
Crane, Frederick Charles, Upper Bedford Place, Russell Square, Surgeon and Apothecary. *Gibson*, Off. Ass.; *Cheeswright*, Birch Lane. Oct. 28.

Cooke, John, South Molton Street, Tailor. *Bell*, Vine Street, Regent Street; *Goldsmid*, Off. Ass. Oct. 31.  
Clarke, Robert, and John Burgess, Coal Exchange, London, Coal Factors. *Gibson*, Off. Ass.; *Willis & Co.*, Tokenhouse Yard. Nov. 4.  
Carter, Thomas, Cateaton Street, Cloth Factor. *Gross*, Off. Ass.; *Hesloote*, Coleman Street. Nov. 4.  
Curry, Robert, Lillawood, Hesham, Northumberland, Cattle Dealer. *Mounsey & Co.*, Staple Inn; *Ewart*, Carlisle. Nov. 4.  
Cooper, William Joseph, Sackville Street, Piccadilly, Tailor. *Lacy & Co.*, King's Arms Yard, Coleman Street. *Grakam*, Off. Ass. Nov. 11.  
Gorpe, Thomas, Limehouse, Tavern Keeper. *Groom*, Off. Ass.; *Kearney & Co.*, Lothbury. Nov. 11.  
Carter, Charles, Oxford Street. Woollen Draper. *Read*, Bread Street, Cheapside; *Waishman*, Off. Ass. Nov. 11.  
Coleman, Benjamin Yates, Liverpool, Watch Manufacturer. *Hume*, Liverpool; *Chester*, Staple Inn. Nov. 14.  
Cook, John, Dartford, Kent, Miller. *Swinford*, Mark Lane; *Waishman*, Off. Ass. Nov. 18.  
Cripps, Thomas, Winsom, Gloucester, Blacksmith and Wheelwright. *Harley*, Gray's Inn Square; *Lediard*, Cirencester. Nov. 18.  
Clews, Ralph, and James Clews, Cobridge, Burslem, Stafford, Manufacturers of Earthenware. *Griffin*, Shelton; *Mayhem & Co.*, Carey Street, Lincoln's Inn. Nov. 18.  
De Pinna, Joshua Sarfata, Bucklersbury, Feather and Leghorn Hat Broker. *Grees*, Off. Ass.; *Gates*, Lime Street. Oct. 28.  
Davies, Richard, Noble Street, Straw Hat and Ostrich Feather Manufacturer. *Gross*, Off. Ass.; *James*, Bucklersbury. Nov. 7.  
Dean, Thomas, Asylum Buildings, Westminster Road, Cow-Keeper and Cheesamonger. *Duncan*, Lincoln's Inn Fields; *Udlington*, Off. Ass. Nov. 11.  
Dakin, Henry, High Street, Borough, Cheesamonger. *Belcher*, Off. Ass.; *Fitch*, Union Street, Southwark. Nov. 14.  
Dewhurst, Thomas, Manchester, Bookseller, Stationer, and Printseller. *Bowden & Co.*, Aldermanbury; *Goldsmid*, Off. Ass. Nov. 18.  
Duffell, John, Bridge, Kent, Grocer. *Wright*, Margate; *Hall & Co.*, Great James Street, Bedford Row. Nov. 18.  
Emson, Charles, Sawbridgeworth, Hertford, Horse Dealer. *Gibson*, Off. Ass.; *Robinson*, Mount Street, Grosvenor Square. Oct. 24.  
Emery, John Claudius, Broad Street Buildings, and Lloyd's Coffee House, Underwriter and Merchant. *Allen*, Frederick's Place, Old Jewry; *Clark*, Off. Ass. Nov. 7.  
Forth, Jacob, Nottingham, Hatter and Furrer. *Bowley*, Nottingham; *Johnson & Co.*, Temple. Oct. 21.  
Flaxman, Robert, Fetter Lane, Carpenter. *Belcher*, Off. Ass.; *Dovey*, Dorset Street, Fleet Street. Oct. 31.  
Frances, Edmund, Loampt-hill, Lewisham, Kent, Baker. *Gibson*, Off. Ass.; *Brown & Co.*, Commercial Sale Rooms, Mincing Lane. Nov. 11.  
Farmer, George Winyatt, Tavistock Street, Covent Garden, Jeweller and Cutler. *Groom*, Off. Ass.; *Amory & Co.*, Throgmorton Street. Nov. 14.  
Frankland, Francis, Oxford Street, Carpet Warehouseman. *Edwards*, Off. Ass.; *Pyeon*, Lothbury. Nov. 18.  
Gray, Mary, Walsall, Stafford, Widow, Grocer. *Hesley*, Walsall; *Turner*, Bloomsbury Square. Oct. 24.  
Goode, Samuel, King's Lynn, Norfolk, Money Scrivener. *Pitcher*, King's Lynn; *Clews & Co.*, Temple. Oct. 24.  
Gatenby, Robert, High Street, Shadwell, Grocer and Tea Dealer. *Abbott*, Off. Ass.; *Templer & Co.*, Great Tower Street. Oct. 28.  
Granger, Thomas, Hemlock Court, Carey Street, Victualler. *Edwards*, Off. Ass.; *Tucker & Co.*, Basinghall Street. Nov. 11.  
Gowar, Thomas, Greenwich Road, Kent, Coachmaker. *Regers*, Macnhester Buildings, Westminster; *Johnson*, Off. Ass. Nov. 11.  
Grove, Thomas, Great Surrey Street, Tailor. *Hoppe*, Sun Court, Cornhill; *Lackington*, Off. Ass. Nov. 14.  
Godfrey, Simon, Bristol, Jeweller, Hawker in Jewry, and Factor. *Hewson*, Birmingham; *Norton & Co.*, Gray's Inn Square. Nov. 14.  
Hall, James, Preston, Lancaster, Grocer and Tea Dealer. *Adlington & Co.*, Bedford Row; *Proctor & Co.*, Preston. Oct. 21.  
Howlett, Elizabeth, Widow, and John Jealous Brimmer Frith Street, Soho Square, Printers. *Groom*, Off. Ass.; *Evans*, Gray's Inn Square. Oct. 24.  
Hughes, Thomas, Leamington Priors, Warwick, Auctioneer. *Smallbone*, Leamington Priors; *Wimburn & Co.*, Chancery Lane. Oct. 21.  
Harris, Daniel, Strand, Hosier and Glover. *Groom*, Off. Ass.; *Garrard*, Suffolk Street, Pall Mall East. Oct. 28.  
Holden, James, Northampton, Halifax, York, Worsted Spinner. *Stansfield & Co.*, Halifax; *Wiglesworth & Co.*, Gray's Inn Square. Nov. 4.  
Harvey, Elias, Exeter, Baby-linen Manufacturer. *Mearns*, Burfoot, King's Bench Walk, Temple; *Gidley*, Exeter. Nov. 7.  
Hampson, John, Salford, Lancaster, Schoolmaster and Bookseller. *Johnson & Weatherall*, Temple; *Bagshaw*, Manchester. Nov. 7.  
Harwar, Charles, Serle's Place, Carey Street, Lincoln's Inn, Paper Merchant. *Spinks*, King's Bench Walk, Temple; *Redfern*, Oldham. [Nov. 11.]

- Harris, William, sen., and Benjamin Harris, Stoke Prior, Worcester, Millers. *Young & Co., Essex Street, Strand; Robeson, Droitwich.* Nov. 11.
- Houghton, George, Hertford Street, Mayfair, Saddler and Harness Maker. *Gibson, Off. Ass.; Randall, Castle Street, Holborn.* Nov. 14.
- Hutch, Wm. Henry Paul, Regent Street, Pall Mall, Boot & Shoe-maker. *Willet, Essex Street, Strand; Waitman, Off. Ass.* Nov. 16.
- Halliley, John, John Brooke, James Halliley, and John Halliley, jun., Dewsbury, York, Woollen Manufacturers. *Stocks, jun., Halifax; Jacques & Co., Barnard's Inn.* Nov. 18.
- Isaac, Isaac Joseph Benjamin, Topham, Devon, Ship Owner. *Williams, Alfred Place, Bedford Square.* Oct. 31.
- Jones, Thomas Meredith, Birmingham, Retail Brewer. *Harrison, Birmingham; Norton & Co., Gray's Inn Square.* Oct. 23.
- James, Wm., Bath, Soap Boiler. *Mantle, Great Surrey Street; Hellings, Bath.* Oct. 31.
- Jones, Horatio, Poultry, Chisnaman. *Belcher, Off. Ass.; Heme, St. Mildred's Court, Poultry.* Nov. 7.
- Jones, Charles Tyrwhit, Brighton, Horse Dealer and Coach Proprietor. *Green, Off. Ass.; Earle & Co., Lombard Street.* Nov. 11.
- Kelk, James Burrows, Nottingham, Lace Manufacturer. *Curham & Co., Nottingham; Johnson & Weatherall, Temple.* Nov. 4.
- Kerwood, Jane, Cassington, Oxford, Widow, Grocer and Baker. *Close, Furnival's Inn; Leake, Witney.* Nov. 14.
- Lloyd, Edmund, Harley Street, Cavendish Square, Bookseller. *Brickett & Son, Cloak Lane; Waitman, Off. Ass.* Oct. 24.
- Lewis, Richard, and James Dutton, Wootton-under-Edge, Gloucester, Clothiers. *Gibson, Off. Ass.; Heatcote, Coleman Street; Wicket, Wootton-under-Edge.* Oct. 24.
- Lord, Thomas, Newton Heath & Manchester, Silk Manufacturer. *Booth, Manchester; Johnson & Co., Temple.* Oct. 24.
- Lewis, Thomas Robert, Tonbridge Place, New Road, Wine Merchant. *Gibson, Off. Ass.; Blunt & Co., Liverpool Street.* Oct. 31.
- Latham, Thomas, Liverpool, Innkeeper. *Mawdsley, Liverpool; Adlington & Co., Bedford Row.* Oct. 31.
- Mickle, George, Newcastle-upon-Tyne, Merchant. *Meggison & Co., King's Road, Bedford Row; Brockett & Co., Newcastle-upon-Tyne.* Nov. 18.
- Mathwin, Elizabeth, Foster Mathwin, and Thomas Mathwin, North Shields, Northumberland, Chain Makers. *Tinsley, Yarmouth; Robinson, New Inn.* Nov. 18.
- Marks, Samuel, and Joseph Marks, Exeter, Glass and General Merchants. *Cloves & Co., Temple; Turner, Exeter.* Oct. 21.
- Martin, Ibbott Brooke, Salisbury, Wilts, Draper and Hosier. *Adlington & Co., Bedford Row; Batchellor & Co., Bath.* Nov. 4.
- Mills, Samuel, sen., Benjamin Jowett, and Samuel Mills, jun., Bolt Court, Fleet Street, Printers. *Lofly & Co., King Street, Cheapside; Goldsmith, Off. Ass.* Nov. 7.
- Monson, Thomas, Eign, Hereford, Timber Merchant. *Cavels & Co., Southampton Buildings, Chancery Lane; St., Hereford.* Nov. 7.
- Medwin, Thomas Charles, Broadwall, Stamford Street, Blackfriars Road, Engineer & Miller. *Abbott, Off. Ass.; Tucker & Co., Basinghall Street.* Nov. 11.
- Mansell, Thomas, Stourbridge, Worcester, Grocer and Tea Dealer. *Gravelbrook, Stourbridge; Jenkins & Co., New Inn.* Nov. 11.
- Maude, Thomas Holme, White Birk, near Blackburn, Lancaster, Dyer. *Ainsworth, Blackburn; Clarke & Medcalf, Lincoln's Inn Fields.* Nov. 14.
- Nicholson, John, Cheltenham and Charlton-Kings, Gloucester, Mercer and Upholsterer. *Shirreff, Lincoln's Inn Fields.* Nov. 4.
- Oramond, Richard, Wilton Place, Knightsbridge, and Great Scotland Yard, Coal Merchant, and of Piccadilly, Hatter. *Green, Off. Ass.; Hopwood & Co., Chancery Lane.* Oct. 21.
- Price, Ronald, Greenwich, Kent, Grocer and Tea Dealer. *Cartier, Greenwich; Johnson, Off. Ass.* Oct. 24.
- Priestley, Thomas, Halifax, York, Woolstapler. *Jacques & Co., Barnard's Inn; Mitchell, Halifax.* Oct. 28.
- Prosser, Thomas, Colleshill, Warwick, Draper and Grocer. *Clifton, Chancery Lane; Benson & Co., Birmingham.* Oct. 28.
- Peak, John Berks, Market Drayton, Salop, Tanner. *Wilson, Temple; Hyatt & Co., Newcastle-upon-Lyne.* Oct. 28.
- Phillips, Edmund, Change Alley, Cornhill, Provision Merchant. *Belcher, Off. Ass.; Walsing, Wellington Street, London Bridge.* Nov. 7.
- Pattison, Wm., Cross Street, Islington, Merchant. *Green, Off. Ass.; Cote, Austin Friars, and Cote & Co., Great Winchester Street.* Nov. 18.
- Pugh, George, Sheffield, York, Laceman. *Rodgers, Devonshire Square, Bishopgate Street; Vickers, Sheffield.* Nov. 18.
- Farmenter, John, Melbourn, Cambridge, Linen Draper. *Adcock, Cambridge; Egua & Co., Essex Street, Strand.* Nov. 18.
- Plunket, Thomas, Wolverhampton, Stafford, Grocer. *Capes, Raymond Buildings, Gray's Inn; Holyoake & Co., Wolverhampton.* Nov. 18.
- Richards, William, Oxford Street, Jeweller. *Wickess, Hatton Garden; Waitman, Off. Ass.* Oct. 21.
- Russon, John, Carnarvon, Coal Merchant. *Lowe & Co., Southampton Buildings, Chancery Lane; Roberts, Carnarvon.* Oct. 21.
- Rivers, George, Twickenham, Middlesex, Upholsterer and Cabinet Maker. *Abbott, Off. Ass.; Lewis, Bernard Street, Russell Square.* Nov. 11.
- Rivers, Joseph, Highwych, Sawbridgeworth, Hereford, Grocer. *Belcher, Off. Ass.; Risley, Quality Court, Quality Chambers, Chancery Lane.* Nov. 11.
- Roberts, Henry John, James Street, Lisson Grove, Victualler. *Lytle, Great James Street, Bedford Row; Clark, Off. Ass.* Nov. 18.
- Smith, Wm., Birmingham, Victualler. *Taylor & Co., Bedford Row; Ryland, Birmingham.* Nov. 18.
- Smith, John Watson, North Shields, Northumberland, Ship Owner. *Dunn & Co., Raymond Buildings, Gray's Inn; Wilson, Newcastle-upon-Tyne.* Oct. 28.
- Shaw, Jonathan, Great Driffield, York, Corn Factor and Malster. *Walmaley & Co., Chancery Lane; Scotchburn & Co., Great Driffield.* Oct. 23.
- Skinner, Robert, Exmouth, Devon, Baker and Pastry Cook. *Cloves & Co., Temple; Warren, Exeter.* Oct. 28.
- Straker, John, Jarrow Lodge, Durham, Ship Builder. *Meggison & Co., King's Road, Bedford Row; Brockett & Co., Newcastle-upon-Tyne.* Nov. 7.
- Spring, William, Great Portland Street, Portland Place, Plumber & Glazier. *Edwards, Off. Ass.; Graham & Co., Castle Street, Holborn.* Nov. 14.
- Stanley, Thomas, Leeds, York, Manufacturer. *Wilson, Southampton Street, Bloomsbury Square; Payne & Co., Leeds.* Nov. 18.
- Tiley, Matthew, Bath, Hatter. *Jones, Crosby Square; Hellings, Bath.* Nov. 4.
- Taylor, James, Spitaland Bridge, Rochdale, Lancaster, Hatter. *Shuttleworth & Co., Rochdale; Smith, Chancery Lane.* Nov. 11.
- Theed, Thomas, West Square, Southwark, Picture Dealer. *Carlson, Chancery Lane; Johnson, Off. Ass.* Nov. 18.
- Verey, John, Regent Street, Hosier. *Abbott, Off. Ass.; Poyster, Lawrence Lane, Cheapside.* Nov. 18.
- Vouhoir, Francis, Rue de Clerg, Paris, in the Kingdom of France, Merchant. *Belcher, Off. Ass.; Pearce & Co., St. Swithin's Lane.* Nov. 18.
- Wyld, John, Rathbone Place, Oxford Street, Hosier and Haberdasher. *Abbott, Off. Ass.; Whitelock, Aldermanbury.* Oct. 31.
- Ward, Richard George, Southampton, Perfumer and Hair Dresser. *Keane, Gray's Inn Square; Graham, Off. Ass.* Nov. 4.
- Wicks, Alfred Nelson, Clement's Lane, Lombard Street, Watch and Clock Maker. *Groom, Off. Ass.; Geane, Bedford Row.* Nov. 7.
- Webb, John Wesley, Axbridge, Somerset, Grocer and Draper. *Richards & Co., Lincoln's Inn Fields; Phelps & Co., Wells.* Nov. 7.
- Wadelin, Wm. Walter, Wolverhampton, Stafford, Shoe Manufacturer. *Moss, Wolverhampton; Philpot & Co., Southampton Street, Bloomsbury.* Nov. 14.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Oct. 21, to Nov. 18, 1834, both inclusive,  
with Dates when gazetted.

The names printed in *Italics* are the Partners who receive and pay debts.

- Bromley, Stretch Cowley, and Henry Hugh Pyke, University Street, Bedford Square, Attorneys and Solicitors. Nov. 11.
- Chitty, George, and James Young, Shaftesbury, Attorneys and Solicitors. Nov. 4.
- Crowdy, Wm., and Stephen Demainbray, Highworth, Wilts, Attorneys and Conveyancers. Nov. 7.
- Dickin, Job Horatio, and Francis Dickes, Manchester, Attorneys and Solicitors. Nov. 11.
- Pasmore, James, and Thomas David Taylor, Basinghall Street, Attorneys and Solicitors. Nov. 18.
- Smith, Thomas Daniel St. George, and John Spencers, Derby, Attorneys and Solicitors. Oct. 24.

# The Legal Observer.

Vol. IX. SATURDAY, DECEMBER 6, 1834. No. CCXLI.

—“Quod magis ad Nos  
Pertinet, et nescire malum est, agitamus.

HONAT.

## THE LATE LORD CHANCELLOR.

WE are obliged, most unwillingly, again to notice the conduct of Lord Brougham. While we recorded his farewell speeches in our last number, we had hoped to be spared the necessity of saying a word of comment on them; for certainly speeches—saving perhaps the last—more notable, were never made by a retiring Lord Chancellor. First, we have the noble Lord contradicting an absurd rumour stated in a Sunday newspaper, which nobody, not even the writer, believed for one moment—declaring that it was his unalterable intention to give up the Great Seal, saying “*emphatically* that he *would* give it up”—evidently intending it to be inferred that he had the option of retaining it—aye, at the very time when the King had received him with marked coldness—when his own party looked upon him as the great cause of their misfortunes—when every other party avoided him—at that moment he evidently wished it to be supposed by the public, that he was pressed to continue in office—as if the best contradiction that could be given to any idle rumour as to his not resigning, was not the fact of the resignation itself in the Court Circular of the very day when he made this speech.

It has been usual on former occasions for the Lord Chancellor, when he had resigned his office, to leave the public Court and to hear such matters as were then actually *sub judice* in the private room—so did Lord Eldon—so did Lord Lyndhurst. Not so, however, did Lord Brougham. He preferred sitting in open Court, crowded of course to excess; and far from confining himself to the business actually commenced

by him before his resignation, declared his intention of hearing any other matters that might be brought before him, and continued amusing the unlearned auditors, who were closely packed around him, with speeches adapted to their understanding. Then, on the cause of *Page and Broom* being called on, he took occasion to contradict a rumour which he said had gone abroad, that the defendants were relations of his own. “It was hardly necessary to say that they were no connection of his. He believed they were very worthy and respectable carpet manufacturers in Kidderminster, &c.” At last, however, it plainly appeared, that however willing the learned Lord might be to adjudicate, the parties had no great fancy for his opinion, and on Friday the 21st of November he positively made his last appearance, and took leave of the Bar. This being done, we willingly withdrew our attention from him; when, to our utter surprise, we were informed by the usual public channels that he had actually applied to the present Lord Chancellor to be made Chief Baron of the Exchequer, offering to perform its duties for the amount of his retiring allowance of 5,000*l.* a-year, and his expenses, on the pretext of his saving the country this sum, by earning it as a Judge. Now, Mr. Cobbett has frequently told the readers of his Register, that he knows a man who will do the duties of the monarch of this country for 300*l.* a-year; and we have no doubt that the person referred to would be equally ready to perform the duties of Chief Baron for the same sum; so that, if the mere saving to the country is to be the object, Mr. Cobbett’s man beats Lord Brougham hollow. Which of the two would be most fit, in other res-

pects, for the latter office, we have no means of deciding. It has been remarked of Lord Brougham, by a wit of the day, "that it was a pity he did not know a little law, for he would then know a little of every thing." But until this little is acquired, we confess, on the score of economy, we are inclined to prefer Mr. Cobbett's man at 300*l*.

To speak gravely, we cannot believe that Lord Brougham ever supposed himself that his offer would be taken. His motive, we conceive, for making it, was that he might make a speech about it, and that when it is objected to him that he has increased his retiring allowance to 5,000*l*., he may have the answer ready, that he was willing to have worked for it, if the Ministry would have let him. We are much mistaken if his application be attended to.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

### No. XII.

#### THE ACT TO FACILITATE EXCHANGES IN COMMON FIELDS.

4 & 5 W. 4, c. 30.

THIS act facilitates the exchange of pieces of land lying intermixed in common fields, for other pieces of land lying therein, or being part of the inclosed lands in the same or any adjoining parish; and it enacts (s. 1.) that from and after the passing of this act any person who shall be seized or possessed of or entitled in possession to any land in any common field, as tenant in fee simple, or in fee tail, general or special, or for life or lives, or by the curtesy of England, or for any other estate of freehold, or for years determinable on any life or lives, or for any term of years whereof one hundred years shall be unexpired, and for the guardian, trustee, feoffee for charitable or other uses, husband, or committee of such person who at the time of making any exchange authorized by this act shall be an infant, idiot, lunatic, or feme covert, or under any other disability, may by such deed and with such consent as hereinafter mentioned grant and convey such land or any part thereof to any other person in lieu of and in exchange for any other land, whether lying in the same or any other common field, or for any inclosed land lying within the same or any adjoining parish, and to accept and take from such other person any land in lieu of and in exchange for the land in such common field. And by s. 2, any person who shall be seized or possessed of or entitled in possession to any land which it may be desirable to exchange for the land in

such common field, whether such person shall be tenant in fee simple, or in fee tail, general or special, or for life or lives, or by the curtesy of England, or for any other estate of freehold, or for years determinable on any life or lives, or for any term of years whereof one hundred years shall be unexpired, and for the guardian, trustee, feoffee for charitable or other uses, husband, or committee of such person who shall be an infant, idiot, lunatic, or feme covert, or under any other disability, may consent and agree to such exchange, and grant and convey such land to the person proposing to make such exchange in lieu of and in exchange for the land lying in such common field, subject to the provisions hereinafter contained.

But it is provided that the land given in exchange by persons having limited interests is to be of equal value with the lands taken. (s. 3.) If the exchange be made by any person having only a limited interest, or being under disability, the consent of the person next in remainder is to be obtained; and in case the person next in remainder should be under disability (s. 4.) the guardian, or husband, or committee of such person may consent to such exchange.

The consent of the patron and bishop is necessary for exchange of land held in right of a church. (s. 5.)

The draft deed of exchange is to be signed or sealed by the ecclesiastical person or corporation consenting. (s. 6.) And the exchange is to be made in the form given in the schedule to the act. (s. 7.)

In case of copyholds, the deed of exchange is to be entered on the court rolls. (s. 8.)

The fees to stewards are regulated by s. 9.

In case of church lands, the deed is to be entered in the proper ecclesiastical registry. (s. 10.) And office copies of instruments deposited in the registry are to be evidence. (s. 11.)

The draft of the intended exchange is to be deposited with the clerk of the peace, and notice thereof is to be inserted in some newspaper circulating in the county. (s. 12.)

Persons having any objections are to deposit them with the clerk of the peace within a certain time. (s. 13.)

And fees are to be taken by clerks of the peace. (s. 14.)

The clerk of the peace is to cause the draft deed to be laid before a judge of assize, who shall appoint a barrister to consider the same. (s. 15.)

And the barrister may summon witnesses; and false swearing is made perjury. (s. 16.)

The barrister is to examine witnesses, and determine objections (s. 17); and after inquiry the barrister is to certify as the case may be. (s. 18.)

The barrister may allow or insert a provision in such exchange for the payment in money of such difference in value: provided always, that no exchange shall be made under the authority of this act in which there shall be a difference of more than one fifth part in the

value of the lands proposed to be exchanged. (s. 19.)

The certificate, with draft-deed, is to be laid before the judge, who shall make order thereupon; and the judge may institute further inquiry if he shall think proper. (s. 20.)

The barrister shall further certify to the judge by whom and in what proportions the costs and charges of such proceedings relative to such agreement ought to be borne, and thereupon the said judge shall make such order for payment of such costs and charges as he may think right: provided always, that in the case of any disagreement respecting the amount of such costs, such costs shall be taxed by the master or secondary of the Court of King's Bench. (s. 21.)

Every barrister before whom any inquiry shall be had under the authority of this act shall be entitled to be paid at the rate of five guineas for every day that he shall be employed in making such inquiry, over and above his travelling and all other expenses; and every such barrister shall after the termination of such inquiry transmit a statement of the number of days during which he shall have been employed, and an account of the travelling and all other expenses incurred by him in respect of such employment, to the judge by whom he shall have been appointed, or, in case of the death or illness or retirement of such judge, to any other judge of the superior Courts of Record at Westminster, who shall examine and allow the same, or so much or such parts thereof as he shall see fit; and the same when so allowed shall be paid in the same manner as the other costs and charges incident to such exchange are hereinbefore directed to be paid: provided always, that if more than one case of exchange shall be referred to the same barrister, the remuneration to such barrister shall not be cumulative, but shall be considered as fixed for the day and not for the case. (s. 22.)

Money paid for equality of exchange when the party entitled to the same is under disability, shall be paid into the Court of Chancery. (a. 23.)

The lands given in exchange are to be exonerated from the uses affecting them at the time, and to become subject to such uses as affected the lands taken. (s. 24.)

And after exchange party is not to be evicted. (s. 25.)

The other sections are merely of a formal nature; and in the schedule to the act is given a form of exchange.

## PRACTICAL POINTS OF GENERAL INTEREST.

No. LXX.

### TRUSTEE.

Some doubt has frequently occurred in what cases a trustee may be appointed under the 11 G. 4, and 1 W. 4, c. 60, (which see stated fully

1 L. O. 49—52,) without a reference to the Master. Two cases on the point have been recently reported by Mr. Simons.

In the first of these, *ex parte Shick*, 5 Sim. 281, where the petitioner was the only person interested in the trust property, the *Vice Chancellor* appointed a new trustee to convey,—it appearing that the old trustee had gone to settle in America,—without a reference to the Master. However, in a subsequent case, the same learned Judge said that he had conversed with the *Lord Chancellor*, and that they were both of opinion that he had no jurisdiction under the act to make any order in cases of *lunatic* trustees, or mortgagees, beyond directing the reference to the Master in the first instance. *Anon.*, 5 Sim. 322.

## JURISDICTION OF THE CENTRAL CRIMINAL COURT.

THE following extracts from the Charge of the Recorder of London to the Grand Jury, at the commencement of the Sessions on Monday the 24th of November, may be useful to our readers, on the extent of the jurisdiction of the new Criminal Court.

The jurisdiction of the Court, as now constituted, not only embraced the whole of London and the county of Middlesex, but considerable portions of the counties of Kent, Essex, and Surrey. The 2d section of the act specified more particularly the jurisdiction to be exercised by the Court, and the 3d enacted that the district situated within the limits of the jurisdiction thereinbefore established should be deemed and taken to be in all cases tried before the said justices and judges, one county for all the purposes of venue, local description, trial, judgment, and execution, if not otherwise in the act specially provided for. Those parts of Kent, Essex, and Surrey which the Legislature intended to include within the jurisdiction of the Court there established, consisted of certain parishes situate in those counties, and particularly named in the act, the Legislature thus being guided in the local limits by *parochial boundaries*. In a great variety of cases the locality in which the offence charged was alleged to have been committed would not be very material. In trials where offences were charged to have been committed in counties at large, the law held that if the offence were committed within a certain distance of the boundary of such county, it was cognizable by the court of oyer and terminer holden for that county; here however was the case of a county, as it were, artificially created, and he thought it would be the safer course for them not to be governed by the practice respecting counties generally, but strictly to limit their proceedings under the act to the *precise local boundaries stated in the words of the act itself*; it

would accordingly be their duty to inquire into the locality of every offence which might be brought under their consideration, and ascertain, where necessary, the exact limits of the parish wherein it was charged to have been committed.

The 5th section was one very necessary to the efficacy of the act; it enabled "His Majesty, by and with the advice of his Privy Council, from time to time, to order and direct in what gaol, house of correction, or other prison, being within the limits of this act, any person or persons charged with, or convicted of, offences committed, or alleged to have been committed, within the limits of this act, shall be imprisoned or kept in custody," giving full power to judges, justices of the peace, and all other magistrates acting within the limits of the prescribed district, so to commit to such prison. There could be no doubt that many persons might now in strictness of law be committed to Newgate. The section, however, to which he then referred, enabled the Crown to make provision that no one gaol should be crowded to excess; and moreover, the Crown could not only direct the gaols within the new district to which parties accused might in the first instance be committed, but that in which their sentence, if it should be one of imprisonment, might be executed, and, if of a different nature, in which they might be detained until such sentence could be carried into full effect.

By the 6th and 7th sections provision was made for enabling the Crown to direct the imprisonment in the General Penitentiary at Millbank of any offender who might be sentenced by the Central Criminal Court to any term of imprisonment. Thus it was expected that an opportunity would be afforded for acting upon a uniform system with regard to *secondary punishments*, or rather for trying experiments on an extended scale in that most interesting department of the criminal law, the object of which was to prevent crime by the force of example, and by the reformation of criminals. He need scarcely add, that the Penitentiary at Millbank was much better suited for that purpose than any other prison within the district which had been created under the act.

There were two provisions contained in the 13th and the 17th sections, which, though placed apart in the act, must be construed together. The former of these, the 13th, enacted that "no bill of indictment for any misdemeanour, other than perjury or subornation of perjury, which can or may be presented to the grand jury at any sessions of the peace for the said city of Westminster and borough of Southwark, and counties of Middlesex, Kent, and Surrey, respectively, in which such misdemeanour was committed, or alleged to have been committed, shall be presented to the grand jury to be summoned under the authority of this act, unless the prosecutor, or other person presenting such indictment, shall have been bound by recognizance to prosecute or give evidence at the sessions to be held under the authority of this act against the person or persons accused of such misdemeanour, or unless

such person or persons accused shall have been committed to, or detained in custody, or shall be bound by recognizance to appear at the said sessions, to be held under authority of this act." Those were the words of the 13th section; but the 17th limited the powers of the quarter sessions to the trial of certain offences, and expressly restrains the justices assembled at such sessions from trying certain other offences. Now, the result of that would be, that in some of the cases where the magistrates neglected to bind over the prosecutors, the quarter sessions would be without jurisdiction, and the bill could not come before the grand jury at the Central Criminal Court otherwise than by a circuitous and inconvenient process. And it was to be recollected, that the number of offences which the quarter sessions were restrained from trying was by no means insignificant: they could not try conspiracies, or assaults with intent to commit a felony, nor perjury, nor a variety of offences connected with the coin of the realm. He mentioned these things for the purpose of showing the predicament in which they were placed by the operation of these two sections of the act, and that they might be made aware that delay and inconvenience must arise from the practice of not binding parties over to prosecute. When that precaution was omitted in the cases to which he had been alluding, either the offenders must be held to bail, or a warrant issued for their apprehension, or the bills must be transmitted from the quarter sessions. All that, however, might be obviated by the magistrates binding the prosecutors over without delay.

Another feature of the act was, that indictments under it might be removed by *certiorari* or writ of *habeas corpus*. By the 19th section, justices at quarter sessions might deliver over indictments found at such quarter sessions to the judges of oyer and terminer and general gaol delivery, to be tried under the authority of the new act "in the same manner and to all intents and purposes as the said justices of the peace might do if the said court of oyer and terminer and gaol delivery was holden in the county where such indictments or presentments were found or taken." The 21st section provided that sessions of the peace were not to be affected by sessions holden in pursuance of that act.

The Central Criminal Court would also exercise a jurisdiction over offences committed on the high seas, but the commissioners, in the trial of such offences, would be assisted by the Judge of the Admiralty Court and by the Dean of the Arches, who, from their acquaintance with that department of the laws which applied to offences committed on the high seas, might be supposed better qualified than any of the other commissioners to pronounce an opinion upon any legal question that might arise.

The act contained several minor provisions, to which he had not thought it necessary more particularly to advert; amongst the rest, the power with which the Court was invested of determining the amount of expenses payable to prosecutors.

There was one circumstance to which he would also advert: it was, that the new act did not affect the counties of Kent, Essex, and Surrey in those parts without the districts over which the Central Criminal Court had jurisdiction, for they would be included in the Home Circuit, as heretofore.

## DOUBTS ON THE NEW STATUTES.

### APPORTIONMENT OF RENTS.

I cannot agree with your correspondent S. W. S. (vol. 8, p. 460) on the above subject, as I do not think the act is so badly penned as he would make it. Previous to the late act, a *right* was wanting to an apportionment of rent, &c., *not a remedy*, as that existed. I shall merely refer generally for a collection of the cases on apportionment, to 1 Swans. 338, n; and 3 Evans's Statutes, 1st ed. 738, n. Such being the case, I do not see what else the Legislature had to do more than declare a right to an apportionment; and the moment that was done, the remedy followed. Now S. W. S. would quarrel with the act, and say, that in the case of an annuitant dying in the middle of the half year (his death putting an end to his interest), his representatives could not recover an apportionment, as the wording of the act prevented it. I do not, I confess, see how the act could have been clearer and more concisely drawn than it is; provision is made that apportionment shall take place, and that every such person entitled to an apportionment of a continuing rent, &c. shall have such and such remedy, as there laid down: why it should make provision for that case which did not require provision, I cannot see. Let any one read half of the second section, and he will say, here is provision for every kind of apportionment: then steps in the Legislature, and says, it would be hard upon those having to pay the apportionment, in the case of a continuing rent, &c., to have to pay it sooner than they otherwise would if the event causing apportionment had not happened, so we will provide for that event; and accordingly they have done so, in a very concise form. It is nothing more than saying, I give you all my property, save so much. No one would argue that this saving destroyed the original gift.

### EXCHANGE OF LANDS IN COMMON FIELDS.

I cannot agree with S. W. S., that the land to be taken in exchange lying in a common field may be anywhere than in the same or adjoining parish. By the grammatical construction of the sentence (setting aside the aid of the preamble), the common field land must be in the same or the adjoining parish. The sentence amounts to this—*A. B.* shall convey to *C. D.* land in lieu of other common field land or inclosed land in the same or adjoining parish. By giving this another half hour's perusal, S. W. S. will, I think, find that he has unjustly abused the drawer of this act.

M.

## DISPUTED DECISIONS.

### ASSIGNMENT BY BANKRUPT.

*Smith v. Smith*, 2 C. & M. 231; 8 L. O. 327.

My object in noticing the present and other cases is, to show how far the more recent cases on this subject are at variance with the opinion of an eminent counsel, now no longer at the Bar, but whose opinion is considered as valuable as any judgment.

The first case I shall refer to is *Dearle v. Hall*, 3 Russ. 1. There a party being entitled to a life-interest in certain funds in the hands of trustees; assigned the same to a third party, but no notice of such assignment was given to the trustees, *previous to a payment* of half a year's interest, which they made to a second assignee, who had given them notice so to do. The bill was filed by the first assignee against the second, who relied upon his having given the first notice to the trustees, and this notice was held by Sir Thomas Plumer to give the second assignee the priority,—on the principle that the first assignee had been *negligent*, and in consequence thereof, third parties had been involved in transactions which could not have taken place, if the first purchasers, by omitting to communicate their claims to the legal holders of the fund, had not put it out of the power of those legal holders, though acting with perfect fairness and honesty, to represent to the subsequent purchaser the true state of circumstances. The main case relied upon was that of *Wright v. Lord Dorchester*, 3 Russ. 49, n. upon which case Sir T. Plumer thus expresses himself:—"Though a qualified and conditional determination, and made without prejudice to a final decision, yet, considering the known habits and caution of the great Judge (Lord Eldon) by whom that interlocutory order was pronounced, and weight due even to the first impressions of his Lordship, is entitled to considerable authority. The puisne incumbrancer was not put into permanent possession in that case by a power of attorney to receive the dividends, more than by actual payment of the current interest in the present case, and a promise of regular payment in future."

In the case of *Loveridge v. Cooper*, 3 Russ. 30, the circumstances were the same as the last case, and received a like decision from the same learned Judge.

Both cases afterwards came by way of appeal before, and were affirmed by, Lord Lyndhurst. See 3 Russ. 38, 48.

Before mentioning the opinion above alluded to, I shall first mention a case of a like nature, which came before Sir Thomas Plumer, when Vice Chancellor, in 1814. The case is that of *Cooper v. Fynmore*, 3 Russ. 60; in which case, a party entitled to the interest of a trust fund, assigned the same to a third party, but no notice was given to the trustees. A second assignment afterwards took place, of which notice was duly given to the trustees. On a bill filed by the first assignee, Sir Thomas Plumer said, that "mere neglect of notice was not



sufficient to postpone him. In order to deprive him of his priority, it was necessary that there should be such laches as, in a Court of Equity, amounted to *fraud*.

The case of *Wright v. Lord Dorchester*, (a note of which will be found 3 Russ. 49.) a party entitled to a life-interest in trust-funds, assigns his interest, but no notice was given to the trustees. On a second assignment being made, application was made to the trustees, who gave the second assignee a power of attorney to receive the interest. Lord Eldon dissolved an injunction obtained by the first assignee against the second assignee, to prevent the transfer of the stock and payment of the dividends to the second assignee, on the second assignee's giving security to refund, in case the point should be decided against him. Mr. Bell was counsel for the second assignee in this case, and therefore what he urged then (1808) in his favour may be set down as the mere arguments of counsel. Within this year, however, I was present with him at the late Lord Chief Baron's, and in the course of conversation, he said, that the Court of Chancery had come to a decision which could not be supported either on principle or precedent, and that Sir Thomas Plumer had quite mistaken the case before Lord Eldon, in supposing it to be in favour of his view of the case. He stated, that in *Wright v. Lord Dorchester*, Lord Eldon's opinion turned upon this: viz. that the power of attorney from the trustees to the second assignee was tantamount to a transfer of the fund, which trustees might always do, if before transferring they did not receive notice of a prior-dated incumbrance, without considering whether the first or second assignee first gave them notice.

With this opinion of so eminent a man, coupled with the case first decided by Sir Thomas Plumer, it may be as well that trustees should pause before they act, although I am willing to admit that Sir Thomas Plumer went very fully into the merits of the case; but if it can be shewn that he first relied upon having Lord Eldon's opinion in his favour (and that such was the case may, I think, be collected from his having first decided to the contrary, before he knew of the case of *Wright v. Lord Dorchester*, it may make a great deal of difference in the scale; as, I think, all must admit, that the opinion of one so powerful in Equity would go a great way in forming a test whereby to make the other cases bear out the position. The principle established by these cases goes far beyond any that has hitherto existed in Equity, viz. that *negligence*, instead of *fraud*, (which has hitherto been the principle) shall postpone a prior incumbrancer.

Again, it is adding a clog to the raising of money generally on trust funds, as it very often happens that it is difficult to find out in whom the funds are vested,—as from the death of trustees, or where they refuse to act. It often happens (I say often, as I can speak to several instances) that parties are named trustees without their knowledge; and supposing one of these cases:—a party

applies to the person thus named, who for the first time is informed that he is a trustee, but who at once says he will not act—(this, I admit, is an extreme case; but I maintain the case of *Smith v. Smith* will bear me out)—the notice thus given will, however, be sufficient. To show that *Smith v. Smith* would support this, suppose that the trustee in that case (who was stated to be not the acting trustee) had died after receiving the cursory notice, and after his death a second purchaser had applied to the surviving trustee, who, having no knowledge of his co-trustee's conscience, and having no knowledge himself of the first purchaser's claim, allows the second assignment, and, on the falling in of the property, assigns it accordingly: in such case he would be justified in so doing\*. In *Smith v. Smith*, the fact was in favour of the first assignee, by the trustee living until he was asked the question whether he had notice; but even supposing a written notice, how often and how easily may such things be lost in the constant change of trustees,—power for changing being constantly inserted in settlements,—and a moment's consideration tells us, that this bit of paper, or this *verbal* communication, as now decided, is the main and only evidence of title. If the honesty of parties be not sufficient in such a case, why not introduce some legislative measure to protect parties, instead of leaving the title to a great portion of property dependant upon the uttering of a few words to an indifferent person?

I am inclined to think that Lord Lyndhurst's decision in *Smith v. Smith*, is a retrograde step from his decision in the cases before mentioned; as, if so trifling a notice be sufficient to protect a purchaser, the next decision must be in favour of no notice being requisite.

M.

## SUGGESTIONS FOR THE IMPROVEMENT OF THE LAW.

To the Editor of the Legal Observer.

Sir,

Allow me to propose a new class of subjects, to be continued permanently in your highly useful periodical,—“Suggestions for the Improvement of the Law,”—to be from time to time furnished by your correspondents (or yourself), but of the fitness of which for insertion you should be, of course, the sole arbiter.

\* Admitting the correctness of this position, it would be much stronger than the party taking the security saying to an indifferent trustee, “I have been advancing A. B. money, but am secured by his assignment of trust property.” If the trustee was unconscious of being a trustee of A. B.'s, he might unconsciously swear to having received no notice,—as, at the time, such remark might pass from his memory like any ordinary topic of the day.

It strikes me that from such a source very beneficial results must arise, for valuable ideas sometimes occur to individuals which they have at present no adequate means of recording, or making known to those who are in a situation to turn them to good account. It seems not unlikely that many communications may be made to you of no value; these you would pass over; or you may think it right to give insertion to some such, for the sake of proving them; but this will not detract from the general utility of the plan, which, I repeat, is calculated to be of immense advantage, forming a magazine and record of hints and suggestions from which may be deduced and matured the most valuable amelioration of our legal system.

I beg to submit the following by way of commencement.

#### SMALL LEGACIES.

1. A common law remedy should be provided for recovery of legacies; and under 20l. to be tried before the sheriff, unless, &c. as in case of an ordinary debt. Great vexation and injustice often arises to legatees from the difficulty of their remedy in case of legacies withheld. And the Courts of Equity should also be invested with a summary power to enforce payment of legacies in cases where a common law action might not be effectual.

#### PREVENTING WASTE BY TENANTS.

2. A summary power should be given where an unprincipled tenant ploughs up meadowland, or commits other wilful and irremediable waste, to a landlord, or any other person on his behalf, to arrest an offender committing, or about to commit such act, and carry him before a magistrate, to give security for his good behaviour, so as to prevent the mischief, which is often most serious, and in cases where from the circumstances of the tenant, there is in effect no subsequent remedy.

#### GENERAL CLAUSES IN STATUTES.

3. Instead of a construction clause appended to every act of parliament, a general act should be passed to provide for it in all cases; as that the singular should include plural; male female, &c. unless there be any thing repugnant, &c.

The same as to the clause that "this act may be altered by any other act in this same session."

The same as to the clause in road bills and other local acts, that the act shall be judicially taken notice of, &c.

I. A. M.

### SELECTIONS FROM CORRESPONDENCE. No. LXXXV.

#### LIABILITY OF A HUSBAND AFTER SEPARATION.

Sir,

My absence from London will account for my not having given any reply to the cases

quoted by your correspondent A.L., vol. 8, p. 463, which, he states, contradict a passage of mine, given in p. 312, respecting the liability of a husband after separation. If he had referred to the authority I quoted, he would have found that I had used the very words of Lord Eldon; and knowing that he was going to contradict so great an authority, I think he should have read more cautiously the cases he now quotes as being in opposition. I think he will find that they do not bear him out in what he says, viz. 1st, "that an assent between husband and wife alone is sufficient for the Court to act upon, and that no indemnity is necessary in respect of her debts;" and for this he quotes *Ross v. Willoughby*, 10 Price, 2. On again referring to that case, he will find, that although the assent to live apart, as was natural, was between the husband and wife, still the contract to pay the annuity was with the trustee, otherwise it was useless joining his representatives in the suit. In this case the Court of Exchequer (consisting of the opinions of three Judges, not of the whole, and one of those three only assenting, without giving an opinion) refused to give a decided opinion upon demurrer; and therefore it cannot be considered as deciding that the indemnity was useless, more especially as Mr. Baron Graham, in speaking generally of separation deeds, says, "the determined cases leave no doubt about the legality of deeds of separation, or the right to enforce the payment of money stipulated to be allowed under a covenant therein, except indeed as against creditors of the husband." Here the very want of a valuable consideration is admitted; and with the view of making these deeds valid against creditors, these covenants for indemnity are inserted. The interest of creditors in the above suit was not in dispute.

2dly, In the case of *Logan v. Birkett*, cited from the Rolls, the property was the wife's separate property, and therefore the question as to indemnity was not raised, there being sufficient consideration for the wife granting the annuity to the husband, as he had released his marital rights to her. The following words of the *Master of the Rolls*, shew his opinion as to indemnity: "If there be a covenant by a third person to indemnify the husband against the debts of the wife, this Court will enforce the husband's covenant for the payment of an annuity to the wife." Since then the case of *Ross v. Willoughby* is not decisive; and the case of *Logan v. Birkett*, merely inquires into the consideration given to a married woman for her appointment of her separate estate, I shall continue of the same opinion, and still hold by the words of Lord Eldon.—"The question has never been put upon the contract of the husband and wife. The Court has always put it upon the contract between the husband and the trustee—from the covenant of the trustee to indemnify the husband against her debts." 11 Ves. 532. I might add, that in *Logan v. Birkett*, the wife directed the trustees, after paying the annuity, to indemnify the husband against her debts.

While writing, I may as well take up the pen of your correspondent J. H. E. (now no more), who I perceive has been called upon by a correspondent, "Civis," p. 349, to answer the case of *Westmeath v. Westmeath*, 1 Dow. & C. 519, which he conceives J. H. E. cannot have seen when he wrote. See vol. 8, p. 240. From the knowledge I had of J. H. E., I will venture to say he had not forgotten the above case, but had read it; but not considering it to interfere with anything he asserted, did not think it worthy of mention; and after reading the case myself, I feel more confident that such was his idea. "Civis," I am inclined to think, has taken Mr. Chitty's word for what he asserts, viz. "any deed of separation, except so far perhaps as it may provide for children, is invalid, and may be set aside or treated as void." *Westmeath v. Westmeath* decides no such position; and I will venture to say, that no decision has taken place at the present day authorising such position. Every Judge who has given an opinion substantiating such deeds, has done so because he finds the opinion of others before him; expressing, however, at the same time a doubt how such deeds ever came to be substantiated, and saying that it was fitting that there should be a decision of the House of Lords upon so important a decision. This will be found in every case upon the subject. The case of *Westmeath v. Westmeath* merely decided that two deeds, one executed in contemplation of a future separation, the other professing to be made on an immediate intended separation, but such separation not taking place, were void, save so far as some provision for a child. The general question was never touched. I call the attention of your correspondent and Mr. Chitty to the correction of this error.

M.

## REMOVAL OF THE COURTS FROM WESTMINSTER.

To the Editor of the Legal Observer.

Sir,

In reference to the removal of the Courts of Law from Westminster to a more convenient

situation, and constructing them on a plan affording better accommodation to the parties, counsel, and solicitors attending them, I beg to suggest that a considerable sum towards the expense of effecting such a desirable object might be obtained by a subscription from the members of all branches of the profession, which, even at a very few pounds each, from the numbers mentioned in your articles on this subject, would go a great way, if not towards rebuilding proper Courts, at any rate in compensating the Government for applying the present Courts to other purposes, if their construction should be considered too costly for mere Committee Rooms.

C. B. B.

[We think the Profession would not hesitate in following up this suggestion, if the object could not be otherwise effected; but we think the public at large should pay for building proper Courts of Justice in the metropolis.]

Another suggestion we have heard is, that the expense might be defrayed out of the surplus interest of the Suitors' Fund in the Court of Chancery; and perhaps there may be a surplus fund in the Courts of Common Law, arising from money paid into those Courts, though the amount is probably small in comparison with the Courts of Equity.

We cannot believe that any difficulty will arise on the score of expense, for even the leader of the most rigid system of economy has strongly favoured, rather than opposed, the providing suitable buildings both for the Legislature and the Courts of Justice. Ed.]

## ATTORNEYS TO BE ADMITTED,

Hilary Term, 1835.

KING'S BENCH.

[Concluded from p. 94]

### Clerks' Names.

Moore, William Henry, Liverpool.

Moulden, Joseph Eldin, 6, Frederick's Place.

Ncate, Rowland, 4, New Millman Street.

Nettleship, John, 35, Bread Street, Cheapside.

Newman, Weasey James, Witham, Essex.

Nicholson, George Pearson, Wath-upon-Dearne, York.

### To whom articulated.

Archibald Keightley, same place; assigned to William T. Keightley, same place.

Isaac Fryer, Wimborne Minster, Dorset.

William Graham, Abingdon, Berks; assigned to James Currie, Lincoln's Inn.

William Wright, Cloak Lane.

Edward Wilson Banks, same place.

Thomas Nicholson, same place.

*Clerks' Names.*

Norton, William, 58, Greet Queen Street,  
Lincoln's Inn Fields.

Orme, Henry, 4, Gray's Inn Square.  
Oxenford, John, Finsbury Circus.

Palmer, William, the younger, Birmingham.  
Parker, Robert Strelley, Derby.

Parkes, Thomas William, 17, Mabledon Place,  
Burton Crescent.

Pattinson, Henry Rees, Melmerly Hall, near  
Penrith, Cumberland.

Pedder, James, Liverpool.

Perfect, William Mosley, Pontefract.

Penfold, George, Croydon, Surrey.

Pickering, William, Droitwich, Worcester.

Pickford, Horatio, Manchester.

Platt, Joseph, Hough, Chester.

Pollitt, Thomas Devonport, Fold Harwood,  
Lancaster.

Pratt, Edward, Camberwell.

Price, Arthur Munton, 7, Staple Inn.

Price, Charles, 28, Charlotte Street, Blooms-  
bury.

Pringle, Hall, Castle Street, London.

Proctor, Christopher, Settle, York.

Readith, Wood, York.

Reed, Archibald Joseph, 9, Bow Church Yard.

Remer, Joseph, Altrincham, Chester.

Remington, Reginald, Burton in Kendal, West-  
morland.

Rendall, Simon, Kington, Hereford.

Richards, John, Sun Fire Office.

Roberts, Joseph, 3, Lincoln's Inn New Square.

Rogers, John, 11, Dyer's Buildings.

Rose, William, Great Prescott Street, Good-  
man's Fields.

Rowe, William, 101, Norton Street, Fitzroy  
Square.

Seaman, Edward Cleveland, 5, Queen Street,  
Brompton.

Selby, George, jun., St. John Street Road,  
Clerkenwell.

Selby, Charles, Surrey Place, Surrey Street,  
Strand.

Shapland, William, Plymouth.

Sherrington, Samuel Benjamin, Hampstead.

Sladden, Dilnot, Feversham, Kent.

Smallpiece, William Haydon, 8, New Inn.

Smith, John Wilkinson, Nottingham.

Smythies, Francis, the younger, Colchester,  
Essex.

St. Barbe, Francis Walsingham, 14, New North  
Street, Red Lion Square.

Stephens, Edward, Llandaff, Glamorgan.

Street, Thomas Leach, Lincoln's Inn Fields.

Sympson, Joseph Dyer, 9, Mornington Place,  
Hampstead Road.

Taunton, John, Oxford.

*To whom articulated.*

Thomas Frederick Cole, Godalming; assigned  
to Giles Clarke, Saddler's Hall, Cheapside.

William Grant Allison, Louth, Lincoln.  
Joseph Heapy Watson, Tokenhouse Yard.

William Palmer, the elder, Birmingham.  
Charles Latham, Melton Mowbray, Leicesters;  
assigned to John Wood, York.  
William Parkes, 10, South Square.

William Naish Allford, Sherborne; assigned  
to William Clarke, Bristol.

George James Duncan, Liverpool.

Thomas Everard Upton, Leeds.

Thomas Penfold, same place.

Thomas Gale Curlier, Droitwich.

James Pickford, Manchester; assigned to  
George Richards, Manchester.

Thomas Wyndham Jones, same place.

Thomas Parker, Bury, Lancaster.

William Davison, Bread Street, Cheapside.

Charles Smale, Bideford, Devon.

George Vallance, Brighton.

John Lambert, Alnwick.

William Hartley, late of Settle, deceased; as-  
signed to George Dodgson, Settle.

James Falconer, Doncaster; assigned to Ro-  
bert Rodgers, Sheffield.

Thomas Carr, Newcastle-upon-Tyne.

Hugo Worthington, same place.

Edward Tatham, Kendal.

Benjamin Bodenham, same place.

Alexander Cosmo Orme, King's Bench Office;  
assigned to Charles Rankin, Gray's Inn.

John Smith, Rugeley, Stafford.

William Robert Sydney, New Palace Yard.

Matthew John, Rippingham, same place.

Richard Symons, Wadebridge, Cornwall.

William Simpson, Norwich.

William James Boulton, same place; assigned  
to George Selby, same place.

Robert Home, Berwick-upon-Tweed.

Richard Sago Squire, Plymouth.

Edmund Reeve Palmer, Great Yarmouth,  
Norfolk.

Julius Gaborian Shepherd, same place.

John Smallpiece, Guildford, Surrey.

John Daft, same place.

Francis Smythies, same place.

George Hume, 8, Great James Street, Bed-  
ford Row.

George Berkin Meakham Lisle, Llandaff.

George Leeke Baker, Lincoln's Inn Fields.

John Baker, Aldwick, Somerset; assigned to  
William à Beckett, 7, Golden Square.

Thomas Henry Taunton, late of Oxford, de-  
ceased; assigned to Charles Leake, Oxford.

*Clerks' Names.*

Taylor, Charles, 10, Tottenham Court Road.

Thomas, George Evan, 16, Furnival's Inn.

Thompson, Thomas, the younger, Lancaster.

Tottie, John William, Leeds.

Turner, Abraham, Staple Grove, Somerset.

Townsend, Joseph Phipps, Yeovil, Somerset.

Vallotton, Charles Howell, 24, Golden Square.

Vandenhoff, John George, 15, Salisbury Place.

Venables, William, the younger, Manchester.

Wainwright, Henry Money, 10, Lamb's Conduit Street.

Walker, William, 3, St. John's Wood Grove.

Walker, William, Guisborough, York.

Walker, Joseph, Preston, Lancaster.

Wallington, Benjamin, 24, Hunter Street, Brunswick Square.

Watson, John, the younger, 168, Fleet Street.

Wayman, Harry, 21, New Millman Street.

Weatherill, William, Guisborough, York.

Webster, John, York.

Weeks, Thomas, Castle Alley, Royal Exchange.

Wells, Henry, Brighton.

Whalley, George Hamwood, Canonbury Square, Islington.

Whitcombe, Nathaniel James, 53, Chancery Lane.

Williams, John Pryce, Shrewsbury.

Wilson, William, the younger, Norwich.

Wilson, Thomas Kirkman, 167, Albany Street, Regent's Park.

Winn, Lionel Tollemache, Ipswich.

Wrench, Robert, Grove Hill, Camberwell.

Yates, Charles Francis, 114, Upper Stamford Street.

*To whom articulated.*

Daniel Moore, Tedbury, Hereford; assigned to Robert Phelps, Bosbury, Hereford; and now with Messrs. Douglass and Cragg, 1, Verulam Buildings, agents to Mr. Phelps.

William Whitter, Worthing, Sussex; assigned to George Mounsey Gray, Staple Inn.

Thomas Thompson, the elder, same place.

Thomas William Tottie, Leeds.

John Nicholetts, South Petherton, Somerset.

Thomas Frederick Cole, Godalming; assigned to John Slade, Yeovil.

George Capron, Saville Place.

Thomas George Massey, Liverpool; assigned to Richard Baynes Armstrong, Staple Inn.

Edward Bent, same place.

John Henry Benbow, 1, Stone Buildings.

Thomas Porrett Hayes, Bedford Row.

Henry Clarke, same place.

William Ormewood Pilkington, same place.

Robert Winter, 16, Bedford Row.

Francis Hoole, Sheffield, York.

John Cambridge, Bury St. Edmunds, Suffolk; assigned to John Wayman, same place.

Robert Palmer, same place.

James Russell, York.

Richard Murphy, same place.

Anthony Sheppey Greene, Brighton.

Daniel Heming, late of Lincoln's Inn Fields.

Richard Nation, 23, Somerset Street, Portman Square.

John William Watson, Shrewsbury.

Peter Day, same place.

George Ashby Pritt, late of Liverpool, deceased; assigned to Castel William Clay, Liverpool.

James Wian, same place.

John Peter Fearon, Janer Temple.

Edward Frowd, 33, Essex Street, Strand.

**COMMON PLEAS.***Clerks' Names.*

Adcock, Adrian, Cambridge.

Jeyes, George, 4, Arundel Street, Strand.

Kitton, William Manning, Norwich.

Urquhart, John, 35, Beaufort Row, Chelsea.

*To whom articulated.*

Stephen Adcock, same place.

Theophilus Jeyes, Northampton.

William Rackham, Norwich.

John Egan, Essex Street; assigned to Thomas Richings, Staines, Middlesex.

**RE-ADMISSIONS IN THE KING'S BENCH.**

Everingham, James, Upper Holloway.

Jones, John, Brecon, Brecknock.

Richards, Henry, George Street, Hanover Square.

Skidmore, Joseph, now of Sheffield, York.

Trimming, Edwin Lethbridge, Alton, Southampton.

Wright, Thomas S., formerly of 6, Bucklersbury, now of 47, Salisbury Square.

## SUPERIOR COURTS.

## Vice Chancellor's Court.

## JURISDICTION.—LUNACY.

*This Court may make an order upon a matter arising in a cause in respect to the property of a lunatic, not found so under a commission.*

A question arose incidentally on a matter before this Court, with respect to the jurisdiction of the Court over the property of a person who is a lunatic, but not found to be so under a commission *de lunatico inquirendo*. The Vice-Chancellor declined giving any opinion in the matter until he could confer with the Lord Chancellor.

His Honour, on the following day, said that the Lord Chancellor, after considering the acts of parliament on this subject was of opinion that this Court might make a preliminary order to the Master to report in such cases, because such an order would not be taking the estate out of the party's hands, nor interfering with the jurisdiction of the Lord Chancellor whenever the party should be found a lunatic regularly under a commission, before which the Lord Chancellor himself had no power to deal with a lunatic's property.

*Anonymous*, at the Sittings in Lincoln's Inn Hall, after Trinity Term, 1834.

## Rolls Court.

## PRACTICE.—INFORMATION.

*The Court, upon the hearing of an information against trustees of a charity, will not think it enough that the information was sanctioned by the signature of the Attorney-General, but will also require him to attend, or other counsel to represent him.*

Mr. *Bickersteth* was proceeding, on the part of the relators, to open the information filed in this case.

Mr. *Pemberton*, for the trustees.—The defendants complained of the abuse of the process of the Court, by which the proceeding and information was converted into an instrument of injury to the charity, and of vexation to trustees, by relators, who, for personal advantages, brought such matters before the Court.

The *Master of the Rolls*.—Is not the interposition of the Attorney-General sufficient security against abuse?

Mr. *Pemberton*.—No; for whenever the Attorney-General sanctions the information by his signature, it is not the custom for him to take any further concern in it.

The *Master of the Rolls*.—Does not the Attorney-General attend, or is he not represented by any gentleman?

Mr. *Pemberton*.—He does not appear by himself, or any one else.

The *Master of the Rolls*.—I must request his attendance, in order that I may know what

he desires by instituting the suit; and I cannot hear it otherwise.

Mr. *Bickersteth* had no objection to the suggestion of the Court, if his Honour thought the Attorney-General ought to appear in this matter. He agreed fully that the Attorney-General ought to exercise sufficient controul over the filing of informations on behalf of charities. All he would submit to the Court as to the principle and merits of this case was, that where funds were devoted by the founder of a charity to certain specified purposes, and such funds found their way into the general funds of the persons who were appointed trustees, and were mixed with them so as to make it impossible to know whether the former were duly applied to the purposes for which they were given, the jurisdiction of this Court arose in such cases, and might be exercised for the benefit of the charity.

The *Master of the Rolls* directed his secretary to communicate with the Attorney-General, requesting his attendance on a day most convenient to himself. The case to be postponed till then.

*Attorney-General v. the Fishmongers' Company*, at the Rolls, July 1, 1834.

## AGREEMENT.—SPECIFIC PERFORMANCE.

*A letter signed by A. and sent to his solicitor, stating that he had sold certain property to B. for a sum therein named, and directing him to procure the title deeds, is held to be a memorandum of agreement in writing, within the Statute of Frauds; but the letter must be stamped before available for a decree for specific performances.*

This was a bill for the specific performance of a contract for the sale to the plaintiff of a house and premises at Newport. The contract on which the plaintiff relied, was contained in a letter signed by Rowland Thomas, the vendor, and sent to his solicitor, in which he mentioned the fact of having sold the house at Newport to the plaintiff for a thousand guineas, and desired the solicitor to procure the title deeds from a person in whose hands they were. The original suit was against Rowland Thomas himself, but he having died before answer, his widow and representative was brought before the Court by supplemental bill.

Mr. *Bickersteth*, with whom was Mr. *Lynch*, for the plaintiff, observed, that the facts of the case were too clear, and he did not think it necessary to offer any evidence for the plaintiff, whose case he would rest entirely on that part of the defendant's answer, which stated that the letter was written by the plaintiff, and signed by her husband.

Mr. *Pemberton*, and Mr. *Richards*, for the defendant, submitted that the answer disclosed circumstances of fraud on the part of the plaintiff, in procuring the letter to be signed by Rowland Thomas at a time when he was dangerously ill and incapable of business, which, in the total absence of evidence to establish the case, should induce the Court to dismiss

the bill, and leave the plaintiff to his legal remedy, if any he had. The letter, besides, could not be said to amount to an "agreement in writing or a note or memorandum thereof," within the meaning of the Statute of Frauds; indeed it did not amount to a contract at all, for it was no more than a loose recital or statement of what the owner had done with his property, addressed to his own solicitor, and not intended to bind him in respect of third parties. If, however, it did amount to an agreement, still it was of far too loose and vague a nature to enable the Court to carry it specifically into effect.

The *Master of the Rolls* said, that as it appeared that the parties had entered into an agreement, to which no objection was raised on the ground that the letter was not stamped, which was plainly a device to defraud the revenue, he should allow no decree to be drawn up till the instrument was produced to him stamped. Upon the case itself, he was clearly of opinion, that this was a sufficient *memorandum* of agreement in writing within the statute; and that its terms, especially on reference to the passage which directed the solicitor to procure the title deeds, were, or might be made, sufficiently certain to enable the Court safely to act upon it. If there had been any doubt upon the subject, it might easily be removed, by directing an enquiry; but no doubt was alleged or suggested. The decree must therefore be according to the prayer of the bill.

*Owen v. Thomas*, T. T. 1834.

### King's Bench Practice Court.

#### SHERIFF.—ATTACHMENT.—POUNDAGES.

*If money has been levied on an attachment by the sheriff, he cannot be called on to pay it into Court.*

This was an application against the sheriff of Devon, requiring him to pay into Court a sum of money levied by him under an attachment, and to refund his poundage, which he had also levied.

*Littledale, J.*—We cannot require the sheriff to pay into Court money which he has levied under an attachment. He must pay that over to the party. He, however, is not entitled to his poundage in such a case, and therefore a rule must be taken, requiring him to refund the amount of the poundage levied.

Rule *nisi* accordingly.—*Res v. Sheriff of Devon*. M. T. 1834. K. B. P. C.

#### MANDAMUS TO INDIA.—EXAMINATION OF WITNESSES ABROAD.

*Where a witness is resident in India, the rule for a mandamus to examine him there, is nisi in the first instance.*

In this case an application was made to the Court for a writ of *mandamus*, for the purpose of taking the examination of witnesses resident in India, in an action wherein a question as to

the validity of a will would arise. The cause of action arose in England.

*Littledale, J.* granted the rule, but directed that it should be *nisi* in the first instance.

Rule *nisi* granted.

On a subsequent day this rule was made absolute.—*Doe d. Winter v. Pattison*, M. T. 1834. K. B. P. C.

#### PAYMENT INTO COURT.—PLEA OF TENDER.

*In an action for unliquidated damages, a plea of tender cannot be allowed.*

This was an action brought by a landlord against his tenant, to recover the amount of damages accruing to the former, in consequence of certain covenants in an agreement under which the premises were held being broken. Various breaches were assigned. A sum of 5*l.* was afterwards paid into Court by way of compensation, and received, pursuant to the 3 & 4 W. 4, c. 42, §21. An application was then made to the Court for leave to apply that sum to a plea of tender before action brought.

*Littledale, J.* refused the motion, on the ground that a plea of tender in an action for unliquidated damages cannot be allowed. His Lordship, however, gave leave to renew the application before the full Court.

Such application was afterwards made; but the Judges, by refusing the motion, confirmed the decision of Mr. Justice *Littledale*.

Rule refused.—*Barrett v. Dearle*, M. T. 1834. K. B. P. C.

### Common Pleas.

#### AFFIDAVIT OF DEBT.—BILL OF EXCHANGE.—INTEREST.

*In an affidavit of debt on principal and interest on a bill of exchange, the amount of the bill must be stated.*

On shewing cause against a rule for cancelling the bail-bond, on the ground of a defect in the affidavit of defendant. It was on a bill of exchange, and the sum claimed was 37*l.*, "for debt and interest," without stating the amount due for interest.

*Tindal, C. J.*—The Judges have met in chambers, and expressed their opinion, that where a claim is made for principal and interest, and a date is mentioned from which interest can be computed, it is sufficient.

The case was afterwards disposed of on the ground that the affidavit did not any where mention the amount of the bill.

Rule absolute.—*Brown v. Jackson*, M. T. 1834. C. P.

#### RULE TO COMPUTE.—AFFIDAVIT.—CHRISTIAN NAME.

*The Christian name of the plaintiff as well as of the defendant must be stated, in entitling an affidavit of service of a rule to compute.*

On moving to make a rule to compute absolute, it appeared that the affidavit was not

entitled in the Christian name of the plaintiff as well as of the defendant. The rule itself had not given it either, and the service had been correct. The question was, whether, under these circumstances, the omission was fatal?

*Gaselee, J.*, after consulting the Prothonotary, thought the affidavit must be amended. It would be doubtful whether perjury could now be assigned upon it.

Motion refused.—*Anderson and another v. Jonathan Baker*, M. T. 1834. C. P.

UNIFORMITY OF PROCESS ACT.—CAPIAS —  
IRREGULARITY.

*It is no objection to a writ of capias, that particles not affecting the sense are omitted.*

This was an application to discharge the defendant out of custody, on the ground of an irregularity in the writ of *capias*. In this form was a direction to the sheriff to return the writ if unexecuted, "at the expiration of four calendar months from the date thereof, or sooner, if you shall be thereto required, by order of the said Court, or by any Judge thereof." The irregularity alleged was, that in the copy of the writ served on the defendant, the word "*the*" before "*date*," and also the word "*by*" before "*any Judge*," was omitted. The form given in the schedule of an act of parliament, it was submitted, ought to be strictly adhered to.

*Tindal, C. J.*—The meaning of the writ is not altered by these omissions, and therefore the copy is unobjectionable.

The remainder of the Court concurred.—*Freeman v. Mason*, M. T. 1834. C. P.

SPECIAL CASE.—MASTER IN CHANCERY.—  
SIGNATURE OF COUNSEL.

*A special case cannot be entered for argument with the signature of a Master in Chancery settling it without that of Counsel.*

On application for an order upon the secondary to enter a special case for argument, it appeared that it had not the signature of counsel, as required by the practice of the Court. The Vice Chancellor had directed the opinion of the Court to be taken on the special case, and his order provided that if counsel could not agree upon the case it should be referred to the Master to be settled. Counsel could not agree upon a case; a Master in Chancery then settled it; but counsel would not sign it. The officer of this Court refused to enter it for argument under these circumstances.

*Tindal, C. J.*—The Master is no officer of ours, and the signature of counsel is a form required by this Court; not as expressing their individual agreement in the facts to which they put their names, but as binding them in their argument not to travel out of those facts.

Order refused.

On a subsequent day it appeared, the opposite attorney would not lay the case before counsel for signature.

The Court declined interfering, as the party must apply to the Vice-Chancellor to prevent the consequence of any obstinacy or contempt that obstructed the execution of his order.

*Forbes v. Champneys*, M. T. 1834. C. P.

Eschequer of Pleas.

BAIL.—AFFIDAVIT OF MERITS.—PLEADING.

*Where bail had been allowed on condition of producing an affidavit of merits, the pleading a plea which prevented the merits from being discussed, was held to be no breach of the consideration.*

*A plea that the defendant is not detained in custody, as alleged in the declaration, is not frivolous on the face of it.*

Bail was opposed, on the ground of several defects in the affidavit of justification. Farther time was given, on the condition of producing an affidavit of merits. The bail afterwards appearing to justify, it was objected, that the defendant had pleaded a plea, upon which the merits of the case could not come in question.

*Gurney, B.*, thought as there was an affidavit of merits the bail might justify.

The plea was, that the defendant was not detained in custody as alleged in the declaration. A Judge's order was afterwards obtained to add a plea of the general issue. An application was then made to rescind that order.

The action was for goods sold and delivered. It was contended, that the special plea was frivolous, and pleaded for the mere purpose of inviting a demurrer to gain time. Such a plea by itself was inconsistent with the defendant having a good defence on the merits, as sworn. He ought, therefore, not to be allowed any favour.

*Per Curiam.*—It is not so clear that the first plea was bad: but after an affidavit of merits, we think the case is different, and they ought to be let in.

Rule refused.—*Rise v. Kingston*, M. T. 1834. Excheq.

CHANGING AND BRINGING BACK VENUE.

*It is no answer to a rule for bringing back the venue, that there are special grounds for keeping the venue at the place to which it has been changed.*

One count, in the declaration in this case, was on a bill of exchange, and the other counts were for interest and goods sold. On the common affidavit a rule to change the venue had been obtained. A rule *nisi* was afterwards obtained for bringing back the venue, on the ground that part of the cause of action was on a bill of exchange.

On shewing cause, an affidavit was produced, shewing that all the witnesses lived at the place to which the venue had been changed.

*Per Curiam.*—The venue cannot be changed under these circumstances. They are, at any rate, no ground for discharging this rule. They must be made the subject of an independent



motion. There was a doubt about the practice, and the rule will be absolute, without costs.

Rule absolute, without costs.—*Dawson v. Bowman*, M. T. 1834. Excheq.

**AFFIDAVIT OF DEBT.—BILL OF EXCHANGE.—ACCEPTOR.**

*If an affidavit to hold to bail on a bill of exchange, states the defendant to be indebted to the plaintiff on the bill, which was payable at a day past, it is sufficient.*

Application to set aside proceedings, on the ground of the affidavit of debt being defective. It stated the defendant to be indebted to the plaintiff in the sum of 30*l.* on a bill of exchange, drawn by G. Hawkins upon Sampson by the defendant, payable at a day now past, alleging that the bill was unpaid, or overdue.

Gurney, B., after referring to the other barons) refused the rule.

Rule refused.—*Phillips v. Turner*, M. T. 1834. Excheq.

**LUNATIC.—HABEAS CORPUS.**

*It should be shown, in order to bring up a person from a lunatic asylum, that he is in a fit state to be removed.*

Application for a *habeas corpus* to bring up a person confined in a lunatic asylum, to produce him as a witness. It appeared by the affidavit that he was rational.

Parke, B., said a writ might be obtained by application to a Judge at chambers, on an affidavit of his fitness for removal, and his not being dangerous.

*Ex parte Boyd*, M. T. 1834. Excheq.

**JUDGMENT AS IN CASE OF A NONSUIT.**

*If an attorney withdraws his record because the plaintiff has failed to supply him with money, it is not a ground for discharging a rule for judgment as in case of a nonsuit.*

The cause shewn was, that the plaintiff had been unable to furnish his attorney with money to proceed, and therefore the attorney withdrew the record. He was, however, now ready to try, and to give a peremptory undertaking.

In support of the rule, it was contended that these circumstances were no cause for the defendant to show against this rule.

*Per Curiam*.—It would be going farther than we have hitherto gone, if we were to allow this cause to be a good answer. It is a good excuse for the attorney, but not for the client. Some reasonable cause must be alleged for discharging the rule, or we should repeal the act of parliament.

Rule absolute.—*Cleasby v. Poole and others*, M. T. 1834. Excheq.

**JUDGMENT AS IN CASE OF A NONSUIT.—SHERIFF'S COURT.**

*Issue was joined on the 20th of June, and notice of trial in the sheriff's court given on the 18th of July, and which was countermanded. Motion for judgment as in case of a nonsuit in the next term was held not to be too early.*

In this case the trial was ordered to take place before the sheriff. On June 20th issue was joined; notice of trial was given for the 18th of July, which was countermanded. A rule *nisi* for judgment as in case of a nonsuit having been obtained, it was now contended that it was premature.

*Per Curiam*.—By the 14 G. 2, c. 17, it is provided, that the defendant may have judgment as in case of a nonsuit, if the plaintiff does not bring on his issue to be tried according to the course and practice of the Court. That refers to the practice of the Court existing then or thereafter. As notice of trial was given the motion is not premature.

Rule discharged, on a peremptory understanding to try at the next practical Sheriff's Court.—*Madely v. Butty*, M. T. 1834. Excheq.

**DECLARATION.—PLEA.—DENURRER.—PRISONER.—DETAINDER.**

*It is not a good plea in law to a declaration against a prisoner, describing him detained in the custody of the sheriff, that he is not so detained.*

This was an action for goods sold. The declaration described the defendant as detained in the custody of the sheriff, at the suit of the plaintiff. Plea that he was not so detained. To this plea the defendant demurred.

In support of the plea it was contended that since the new rules, the statement of the detention of the defendant was traversable.

Parke, B.—It is not a good plea.

Judgment for plaintiff.—*Rea v. Kingston*, M. T. 1834. Excheq.

**VENUE.—NEW PLEADING RULES.—DECLARATION.**

*If a venue is improperly stated in a declaration, contrary to the new Pleading Rules, the proper course is to apply to a Judge to strike it out.*

This was an application to set aside a declaration, on the ground that the venue was introduced contrary to Reg. Gen., H. T., 3 & 4 W. 4, 42, s. 8.

Gurney, B., was of opinion that it was no ground for setting aside the declaration, but that an application ought to have been made at chambers to strike it out.

Rule refused.—*Townsend v. Gurney*, M. T. 1834. Excheq.

# ROLLS SITTINGS.

AFTER MICHAELMAS TERM, 1834.

Thursday, . Dec. 4	Motions.
Friday . . . 5	Causes, Further Directions, and Petitions by Consent, and Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 6	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday . . . 8	Motions.
Tuesday . . . 9	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday . . 10	Motions.
Thursday . . . 11	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 12	Causes, Further Directions, and Petitions by Consent, & Pleas, Demurrers, Causes, Further Directions and Exceptions.
Saturday . . . 13	Motions.
Monday . . . 15	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday . . . 16	Motions.
Wednesday . . 17	Petitions in the General Paper.
Thursday . . . 18	Remaining Petitions (if any) and Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 19	Motions.
Saturday . . . 20	Short Causes, Consent
Monday . . . 22	Petitions, and remaining Motions (if any).
Tuesday . . . 23	
Wednesday . . 24	

His Honour will sit at the Rolls Court, Chancery-lane, at ten o'clock.

## COUNTRY COMMISSIONERS OF BANKRUPTCY.

### LANCASHIRE.

#### Bolton.

Richard Gouldsmith, Esq.  
William Adam Hulton, Esq.  
Henry Gaskell, Gent.  
James Cross, Gent.  
Adam Lomax Haworth, Gent.

#### Lancaster.

James Clarke, Esq.  
Robert Greene Bradley, Esq.  
William Sharp, Gent.  
John Taylor Wilson, Gent.

### Liverpool.

#### List 1.

Fletcher Raincock, Esq.  
Henry Lawrence, Esq.  
Richard Radcliffe, Gent.  
Thomas Avison, Gent.  
Richard Brooke, Gent.

#### List 2.

Lazarus Jones Venables, Esq.  
Thomas James Hall, Esq.  
Joshua Lacey, Gent.  
William Thompson, Gent.  
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#### Preston.

Thomas Batty Addison, Esq.  
John Addison, Esq.  
Nicholas Grimshaw, Gent.  
Charles Buck, Gent.  
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#### List 1.

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Robert Brandt, Esq.  
William Duckworth, Gent.  
Samuel Edge, Gent.  
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#### List 2.

John Frederick Foster, Esq.  
Leigh Trafford, Esq.  
Samuel Kay, Gent.  
George Hadfield, Gent.  
Aldcroft Phillips, Gent.

#### List 3.

Edward Jeremiah Lloyd, Esq.  
George Condy, Esq.  
Oswald Milne, Gent.  
John Taylor, Gent.  
James Blackledge Brackenbury, Gent.

[We shall be glad to receive copies of the lists of other counties.]

## ANSWERS TO QUERIES.

### Let of Landlord and Tenant.

NOTICE TO QUIT LODGINGS. p. 16.

A notice to quit must be half a year's notice, expiring at the end of the current year of the tenancy; *Right v. Darby*, 1 T. R. 169; and a notice expiring at any other time will be insufficient, unless by express agreement between the parties; 3 Burr. 1609. A quarterly reservation of rent is not a circumstance from which an agreement to dispense with a half yearly notice is to be inferred; although, where the landlord accepted in such case a three months' notice from his tenant without expressing his assent to, or a dissent from, such notice, it was ruled at N. P. to be presumptive evidence of an agreement that a three months' notice should be sufficient. *Shirley v. Newman*, 1 Esp. 26.

W. W.

## ARREARS OF RENT. VOL. 8, P. 480.

If your correspondent H. had read the 3 & 4 W. 4, c. 27, s. 42, he would have found, that even on the passing of that act, he had, from the 29th of August 1833, to the 1st of January 1834, a right of action for the recovery of the whole of his arrears of rent. This act, as he states, received the royal assent on the 24th July, 1833. The Law Amendment Act did not receive the royal assent until the 14th August 1833, which, by the 3d sec., enables a party to recover any arrears of rent within ten years of the end of the session (29th August), or within twenty years after the cause of action arises. Where two acts of Parliament, passed in the same session, come into force the same day, and are inconsistent, that which received the royal assent latest shall prevail. See *Rea v. Inhabitants of Middlessex*, 2 B. & Ad. 818. Although the Law Amendment Act is made to take effect previous to the Limitation of Actions Act, yet, taking into consideration that they are both restraining statutes, the Courts would no doubt decide in favour of the second.

M.

## QUERIES.

**Law of Property and Conveyancing.**

## ANNUITY—REGISTRATION.

A., being by the will of his grandfather, entitled to 500*l.* upon the death of his father, who enjoys the interest for life, applies to the executors to advance him the sum immediately, who agree so to do upon his executing a covenant, whereby he undertakes to pay them 20*l.* per annum during his father's life. Does this yearly payment fall within the annuity act, and require registration as such. In Bythewood's Conveyancing, edited by Mr. Stewart, 2d edition, Vol. I. page 339, it is stated that an agreement to grant an annuity does not come within the act, which only embraces "deeds, &c., whereby any annuity shall be granted." If this is the law, it is clear the above instrument does not require registration; but with all due deference to the talents of Mr. Stewart, it appears to me that the word *granted*, in the act, must be taken to mean *secured*, for the words of the act are, "every deed, bond, instrument, or other assurance, whereby any annuity shall be granted," and a bond in the legal sense of the word cannot be said to *grant* an annuity.

W. B.

**Law of Landlord and Tenant.**

## UTENSILS DISTRAINABLE.

The parish officers, in order to keep a woman who has a large family from applying for relief, lend her a mangle as a means of subsistence, (she being a washerwoman) on which is painted, in large letters, "The property of the parish of C." The landlord distrains.—Can he take the mangle, or not? it being an instrument by which she gains her livelihood. LEX.

## THE EDITOR'S LETTER BOX.

*The Legal Almanack and Remembrancer*, now nearly ready for publication, will contain Lists of the Judges and Officers of all the Courts at Westminster, and such of the Local Courts as are interesting to the Profession in general.—The Officers of both Houses of Parliament.—A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices: the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c.—The hours of attendance at the Common Law, Equity, and other Offices, carefully ascertained.—The Terms and Returns of Writs.—Barristers, with the date of their call, and Regulations of the Inns of Court.—Members of the Incorporated Law Society, with the regulations for admission.—The Circuits.—The Quarter Sessions;—Aldermen and Law Officers of the City.—The Police Magistrates and Commissioners; and various other Tables of professional utility.

Information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers, will be carried down to latest time. We must, of course, wait until the appointments are completed of the Lord Chancellor, the Lord Chief Baron, the Attorney and Solicitor General, &c.

The suggestion of rendering the Almanack available as an *Office Diary*, may be effected by having that part of the Almanack interleaved which contains the Calendar, or by adding blank leaves at the end. If considered desirable, we will arrange with the publisher to supply such copies, bound up in this way, as may be required.

We doubt whether a satisfactory List can be made out of all the Barristers who attend the several Sessions throughout the country. We have collected information to a certain extent, and will endeavour to complete it. We shall be glad to receive any names that may be sent, particularly the more recent ones. We find that the published Lists of the Circuits are very inaccurate, including the names of many gentlemen who have long left the Circuits, and omitting many who have joined them.

The Letters of S.; "A Law Student;" and "One of the Oppressed;" are under consideration.

The Queries and Answers of V. F., and X. Y., have been received.

In answer to an inquiry,—The Cheap Edition of the Statutes, printed by the King's Printer, was continued through last session, and, we believe, is now complete.

To a Country Subscriber we beg to say, that the Commentaries, as well as the Digests, are separate publications, and we cannot be answerable for the mistakes of his bookseller.

# The Legal Observer.

Vol. IX. SATURDAY, DECEMBER 13, 1834. No. CCXLII.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## DISSERTATIONS ON CONVEY- ANCING.

No. XVIII.

### ON THE PRODUCTION OF A LESSOR'S TITLE.

We shall in this dissertation endeavour to lay before our readers the present state of the law respecting the production of the lessor's title on the purchase of leaseholds,—a subject very frequently discussed, and on which legal opinion has much fluctuated. It is, in fact, generally provided against by the articles of sale; and where an auctioneer on a sale of leaseholds, omitted the usual clause, dispensing with the necessity of producing his employer's title, Lord *Ellenborough*<sup>a</sup> considered the negligence so gross as to preclude the auctioneer from recovery for his trouble in the sale. But it has been very recently decided<sup>b</sup> that where, on the sale of leasehold property, one of the conditions of sale was that the vendor "should not be obliged to produce the lessor's title," the vendee having *aliunde* discovered certain defects in the lessor's title, he was entitled to resist the completion of his purchase, notwithstanding the above condition.

We are, however, here to consider the cases where there has been no stipulation on the subject by the parties, and they are left to their legal rights. It is now well settled in Courts of Equity, that a vendor cannot compel a specific performance of a contract for the purchase of leaseholds, without furnishing an abstract of title,<sup>c</sup>

on the principle, among others, that he who seeks equity must do it. But it has been repeatedly held at common law, that a lessor who enters into a contract for land does not thereby impliedly engage that he will deliver to the lessee an abstract of the title to the freehold;<sup>d</sup> and Lord *Tenterden* very recently<sup>e</sup> decided at *nisi prius*, that upon the sale of a lease without any stipulation for making a good title, or for the production of a lessor's title, that the purchaser cannot insist on its production.

However, these cases may now be considered to be overruled. In *Roper v. Coombes*,<sup>f</sup> where *A.*, by agreement, made on the 31st of March, agreed to grant a lease of certain premises, *habendum* from the 29th of September then next, for twenty-one years, in consideration of 100*l.*, of which 10*l.* were to be paid on the 13th of April, and the residue on having possession of the premises, but no time for granting the lease was fixed by the agreement, and *B.* being called upon to pay the 90*l.*, demanded an abstract of title, which was refused, whereupon he gave notice that he would rescind the contract, and commence an action to recover the 10*l.* which he had paid. It was held that he was entitled to recover, it being proved at the trial that at the time when the action was brought, *A.* had no power to grant the lease contracted for.

In a very recent case,<sup>g</sup> the circumstances were these:—

<sup>v.</sup> *Rayner*, 193; *White v. Foljambe*, 11 Ves. 337; 18 Ves. 505.

<sup>d</sup> *Temple v. Brown*, 6 Taunt. 60; *Gwillim v. Stone*, 3 Taunt. 433; Sug. V. & P. 306.

<sup>e</sup> *George v. Pritchard*, 1 Ry. & Moo. 417.

<sup>f</sup> 6 B. & C. 534; 9 D. & R. 562.

<sup>g</sup> *Souter v. Drake*, 3 Nev. & M. 40.

<sup>a</sup> Cited by Lord *Denman*, C. J.; *Souter v. Drake*, 3 Nev. & M. 45.

<sup>b</sup> *Shepherd v. Kentley*, 1 C. M. & R. 117.

<sup>c</sup> *Fildes v. Hooker*, 2 Meriv. 424; *Purvis*  
NO. CCXLII.

There was a written agreement signed by the plaintiff and defendant, for the assignment of a term of twenty-one years, of which three years and one quarter were unexpired. The plaintiff had produced the lease and the assignment of it to himself, but had refused to produce the lessor's title. And Lord Denman, C. J., after adverting to the cases in equity, continued thus:—"All these were cases in equity, arising on bills for specific performance; and Lord Eldon, and more particularly Sir W. Grant, both advert to the possibility of a distinction between them and actions for damages to be recovered at law for breach of contract. We cannot, however, help thinking, that the opinion of these eminent Judges, and the decisions, especially that of *Purvis v. Rayner*, are authorities upon the general question, whether it arise in a Court of Law or Equity, and that the true ground of refusing relief by a specific performance in these cases is, that the vendor, by his contract, was bound to make out a good title in all respects to the subject agreed to be sold, including the right to the lessor to demise, and that he has not done so. If that be his contract, he must equally fail in a Court of Law, unless he can prove a performance of it on his part. And no reason occurs to us why, as the Courts of Law and of Equity would put the same construction on a contract for the sale of a freehold estate, they should do otherwise in respect of a contract for the sale of a leasehold. The cases at law have not been numerous on the subject of contracts to grant or sell leases. That of *Gwillim v. Stone*, 3 Taunt. 483, was disposed of before the subject was so much considered as it has since been in the cases in equity. Besides the points actually decided were, first, that on a contract to grant a lease there is no engagement necessarily arising by implication of law, that the lessor has sufficient power to grant such a lease, and should shew a good title; for the Court arrested the judgment, on the ground that it was not a good breach of an agreement to grant a lease to state, the defendant had not shewn, and had not, a sufficient title; and the second point decided was, that there was no contract implied in point of fact, to deliver an abstract of title on an agreement to grant a lease. In *Temple v. Brown*, 6 Taunt. 60, the question arose as to the latter point, but it cannot be considered as having been decided by it. In *George v. Pritchard*, Ryan and Moody, 417, on an agreement in general terms, to sell an ex-

isting lease, Lord Tenterden, C. J., was of opinion that no contract to make out a complete title would be implied, and that the vendor, without an express stipulation, was not bound to produce his lessor's title; and he considered the cases in equity as deciding merely "that a vendor, on a bill for a specific performance, could not compel a purchaser to take a lease without shewing the lessor's title." On the other hand, his Lordship said, there was the decision of Lord Ellenborough, already adverted to; and continued, "for the reasons above given we come to the conclusion, that, unless there be a stipulation to the contrary, there is in every contract for the sale of a lease, an implied undertaking to make out the lessor's title to demise, as well as that of the vendor to the lease itself, which implied undertaking is available at law as well as in equity; and we cannot adopt the distinction acted upon in *George v. Pritchard*."

It still remains undecided whether a lessee can in equity, as plaintiff, call for the lessor's title; but perhaps it is not too much to say, that according to the present feeling of the Courts on this subject, he would succeed in such an application.

Where the contract is between the assignor and assignee of a lease, it appears that if the assignor can compel the production of the freehold title, the assignee will be entitled to its production,<sup>h</sup> and where it is impossible for him to do so, a purchaser may recover his deposit and costs<sup>i</sup>.

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## THE LATE LORD CHANCELLOR.

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WE have received one letter, written, it would seem, in an angry moment, blaming us for the sentiments which we have expressed as to the late Lord Chancellor. This letter is dated the 4th instant, and we fear that our last number has increased the indignation of our correspondent. We can assure him, however, that we have patiently reviewed the subject, and cannot regret or modify what we have written. We have no political feeling; we should divert this journal from the purposes for which it was originally started if we allowed it in any respect to be influenced by party, and we can conscientiously declare that it has never been so influenced. When Lord Brougham

<sup>h</sup> See *White v. Foljambe*, 11 Ves. 337.

<sup>i</sup> *Flureau v. Thornhill*, 2 W. Bla. 1078.

was in office he avowed himself the open enemy of our own profession; he chose to oppose, and endeavoured to sacrifice us as lawyers to his desire for power and popularity. Surely it is not strange that he can expect no favour from us; yet we shewed no indecent exultation at his fall, and had he not drawn public attention again upon himself, we should have been silent respecting him. With him as a minister or as a politician we have nothing to do, but as a lawyer and as a judge his actions come directly within our province; and if we profess to represent the feelings of our own profession, we must, often unwillingly, take some notice of them. We are sorry to differ from our correspondent, but we are satisfied that nine-tenths of our own profession think with us, and not with him.

As we are bound to put on record all matters relating to the highest offices of the law, we beg to copy the following letter, which completes the transaction adverted to last week, and with which, no doubt, our readers are already familiar:—

*“Paris, Saturday, Nov. 29.*

“My Lord,—I had the honour of receiving your Lordship’s letter, announcing the state in which Government at present is, and that nothing of any kind can be settled either as to measures or anything else until the arrival of Sir Robert Peel.

“Although I felt extremely anxious to accomplish the two objects of saving a large sum to the public and of completing the reform of the Court of Chancery by abolishing the office of Vice Chancellor, (a subject on which I transmitted a full memorial to your Lordship from Dover, and on which I had sent a memorandum before I left the Great Seal), yet some communications which I have since received from persons in whose judgment I entirely confide, give me room to think that my accepting a judicial situation, though without any emolument whatever, might appear to others to interfere with my Parliamentary duties, I feel myself under the necessity of desiring that the tender of gratuitous service formerly made should be considered as withdrawn. My own clear and unhesitating opinion is, that, following the example of Lord Loughborough and others, I could attend as much to Parliamentary duties when on the bench as when in a private station. But in these times I have no right to take any step which has any tendency to discourage the efforts of those whose principles are my own, and whose confidence I am proud to enjoy.

“I have the honour to be, &c.

(Signed)

“BROUGHAM.”

This therefore, we suppose, closes the Noble Lord’s application for office—an ap-

plication, it must be admitted, hastily made, and as hastily withdrawn. The reasons assigned for the offer are to us insufficient. “A large sum” would certainly not have been saved; the saving, if any, must have been inconsiderable, and as dust in the balance. The abolishing the office of Vice-Chancellor would not have been necessarily furthered by the appointment. Even where the Chief Baron has been much esteemed as a Judge, the business in equity has not been great, and would almost certainly have been less than at present if Lord Brougham had been appointed Chief Baron. But it has been well observed, if the late Lord Chancellor had so anxious a desire to dispense with this office, why were not steps sooner taken in the matter, when he himself had the Great Seal, and had the power of making the alteration? On the contrary, as has been noticed in his farewell speech in the Court of Chancery,<sup>a</sup> he dwells in the most pointed manner on the tried ability and indefatigable industry of the Vice Chancellor, and intimates the absolute necessity for his services in disposing of the business of the Court of Chancery. But it has been said by Mr. E. L. Bulwer, in a note to the Supplement to his Pamphlet, which contains a letter from Lord Brougham, that during the life of the late Sir John Leach the scheme could not be tried, as that learned Judge did not hear motions; but as under the Chancery Regulation Act, all future Masters of the Rolls are to apply themselves to every species of equity business, the plan could only be tried by Lord Brougham’s successor. But it has entirely escaped Mr. Bulwer, that Lord Brougham’s *own act* is the great obstruction to the trial of any scheme of the sort. That noble Lord, on leaving office,<sup>b</sup> claimed the merit of appointing Sir Charles Pepys to the office of Master of the Rolls. Now, we think it clear that if Lord Brougham had had any real intention of abolishing the office of Vice-Chancellor, he had on the death of Sir John Leach the very best opportunity for making the experiment. Sir L. Shadwell might have been created Master of the Rolls, and the filling up his office of Vice-Chancellor might have been suspended. A fair trial might then have been given, which is now obviously impossible, unless Sir C. Pepys or Sir L. Shadwell could be persuaded to retire on a pension; and being both men in the prime of life, and competent

<sup>a</sup> Printed *ante*, p. 87.

<sup>b</sup> See *ante*, p. 87.

to the discharge of their duties, this is not very probable. We can, therefore, only come to the conclusion, that Lord Brougham had no such intention, and has simply raised up the notion in order to give a better grace to a transaction which his own friends regret.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

### No. XIII.

#### THE ACT TO AMEND THE ENGLISH AND IRISH SERVICE OF PROCESS ACT.

4 & 5 W. 4, c. 82.

By the 2 W. 4, c. 33, stated fully 4 L. O. p. 97, the Courts of Chancery and Exchequer in England have the power of ordering the service of their process in any suit concerning lands situate in England or Wales to defendants residing in Ireland or the Isle of Man, § 1; and by § 2, the Courts of Chancery or Exchequer in Ireland have the power of ordering the service of their process in any suit concerning lands in Ireland to defendants residing in England or the Isle of Man. But these sections related only to suits relating to lands, tenements, or hereditaments situated in these countries, and not to any suits relating to other kinds of property. By the present act its operation is enlarged, and it is enacted (§ 1.), that all the provisions contained in the said act relating to suits instituted in the said Courts respectively concerning lands, tenements, or hereditaments situate in England or Wales or in Ireland respectively, shall be extended and applied to all suits instituted in the said Courts respectively concerning any charge, lien, judgment, or incumbrance thereon, or concerning any money vested in any government or other public stock, or public shares in public companies or concerns, or concerning the dividends or produce thereof; and the provisions in the said act authorizing the said Courts respectively to direct that the service in any part of the United Kingdom of Great Britain or Ireland, or the Isle of Man, respectively, of any subpoena or subpoenas, letter missive or letters missive, and of all subsequent process to be had thereon, upon any defendant or defendants in such suit, then residing in such parts of the United Kingdom or the Isle of Man in which he, she, or they should be so

served, should be deemed good service of or be made upon such defendant or defendants, upon such terms, and in such manner, and at such time as to such Courts respectively should seem reasonable, and that such Courts respectively might proceed upon such service as fully and effectually as if the same had been duly made within the jurisdictions of such Courts respectively, shall be extended to any defendant or defendants in any such suit or suits as hereinbefore mentioned, who shall appear by affidavit to be resident in any place, specifying the same, out of the United Kingdom of Great Britain and Ireland; and that the said Courts respectively may, on motion in open Court of any of the complainants in any such suit, founded upon an affidavit or affidavits, and such other documents as may be applicable for the purpose of ascertaining the residence of the party, and the particulars material to identify such party and his residence, and also specifying the means whereby such service may be authenticated, and especially whether there are any British officers, civil or military, appointed by or serving under his Majesty residing at or near such place, to order that service of a subpoena to appear and answer upon the party in the manner thereby directed, or, in case where the said Courts respectively shall deem fit, upon the receiver, steward, or other person receiving or remitting the rents of the lands or premises, if any, in the suit mentioned, returnable at such time as the said Courts respectively shall direct, shall be deemed good service of such party, and afterwards, upon an affidavit of such service had, to order an appearance to be entered for such party in such manner and at such time as the said Courts respectively shall direct, and that thereupon such Courts may respectively proceed upon such service so made as aforesaid as fully and effectually as if the same had been duly made within the jurisdictions of such Courts respectively.

And by § 2, where it shall appear upon affidavit, to be made to the satisfaction of the said Courts respectively, that any defendant in any such suit as hereinbefore mentioned cannot by reasonable diligence be personally served with the subpoena to appear and answer, or that upon inquiry at his usual place of abode he could not be found so as to be served with such process, and that there is just ground for believing that such defendant secretes or withdraws himself so as to avoid being served with the process of such Court, then, and in all such cases, the Court may order that the service of the

subpœna to appear and answer shall be substituted in such manner as the Court shall think reasonable and direct by such order.

## PRACTICAL POINTS OF GENERAL INTEREST.

No. LXXI.

### SWEARING WITNESS.

The following case settles a point in the law of evidence which has been sometimes disputed, viz. that a person producing documents under a *subpœna duces tecum*, need not be sworn if the party by whom he is called does not wish him to be examined. This was so held by the Court of Exchequer, judgment being delivered by *Bayley, B.* in *Summers v. Moseley*, 4 Tyr. 158; and the Court of King's Bench, it will be seen, concur in the same opinion.

At the trial of this cause before *Alderson, J.* at the last assizes for Cumberland, a person was called upon under a *subpœna duces tecum*, to produce a book belonging to certain trustees appointed under an act of parliament, and which was in his custody as their clerk. He produced the book, and the plaintiff's counsel by whom he was called, having no question to put to him, and being prepared with other evidence to identify the book, did not propose to have him sworn; but the counsel for the defendant insisted that this should be done, in order that they might have an opportunity to cross examine. The learned Judge refused to have the party sworn. The plaintiff having obtained a verdict—

*Dundas* now moved for a new trial, on the ground that a person attending with documents under a *subpœna duces tecum*, ought to be sworn before he puts them in; but he admitted that the contrary had been decided last term by the Court of Exchequer, in *Summers v. Moseley*, and that if this Court adhered to the decision there given, he could not support his motion.

*Denman, C. J.* It is best not to disturb a question which has been fully considered and decided.

*Parke, J.* I am of the same opinion. I always thought that a *subpœna duces tecum* had two distinct objects, and that one might be enforced without the other.

*Patteson, J.* concurred.

Rule refused.—*Perry v. Gibson*, 1 Adol. & Ellis, 48.

## THE PROPERTY LAWYER. No. XXXVII.

### RETROSPECTIVE EFFECT OF THE BANKRUPT ACT.

By the 6 G. 4, c. 16, p. 127, it is enacted, "that if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any insolvent act, shall be or become bankrupt, and have obtained, or shall hereafter obtain, such certificate as aforesaid, unless his estate shall produce, after all charges, sufficient to pay every creditor under the commission 15*l.* in the pound, such certificate shall only protect his person from arrest or imprisonment; but his future estate and effects, except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife, and children, shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing of the commission."

In August, 1815, the bankrupt was discharged under the Insolvent Debtors' Act then in force. In July, 1829, a commission of bankrupt issued against him, under which his estate paid in 1830 a dividend of less than 15*l.* in the pound, and he obtained his certificate. In 1831 he married a lady possessed of real and personal property, great part of which was vested in the defendant as her trustee, for her sole use. As to the residue, the wife, previous to her marriage, executed a power of attorney to sell and transfer in order to enable the husband to trade with it; and he was to account for it yearly with the defendant as trustee. The stock, however, remained in the wife's maiden name, and after the marriage the husband sold it out, and placed the proceeds to his account with the Bank of England. This action was brought to recover the balance of that account. The defendant, as trustee of the wife, was substituted by rule of court for the Bank of England, against whom it had been first brought.

"If," said Mr. B. *Bayley*, in delivering judgment, "there has been such previous discharge as the act contemplates, it does not protect them from the claim of the assignees, but vests the property in them; 5 G. 2, c. 30, s. 9, was the only act in force before 6 G. 4, c. 16; and that act provided for the discharge of the person of the bankrupt only, but enacted that his future effects should be liable; and there was a provision in the Insolvent Act applicable to future effects, by which the assignees might seize in execution the future effects of the party. Until 6 G. 4, c. 16, therefore, bankrupts' goods were liable to the claim of each separate creditor, and to that also of his assignees under the Insolvent Act, and between them there might be competition as to who should first seize. The effect of 6 G. 4, c. 16, is to take away this competi-



tion of creditors *inter se*, and to destroy the claims of the assignees of an insolvent debtor who afterwards becomes bankrupt." After examining the words and construction of the several sections of the Act, the learned Baron continued. "The construction of s. 127 is plain; it applies, under the words, 'such certificate as aforesaid,' to discharge under any species of certificate, either under 5 G. 2, c. 30, or 6 G. 4, c. 16, and to every discharge by composition or insolvency, either before 6 G. 4 or after; and there are two cases where it must have been so considered. The King's Bench does state its opinion, though unnecessarily; and whoever remembers that great and eminent man, Lord *Tenterden*, will bear testimony to the peculiar and great caution with which he abstained from deciding unnecessary points. In *Fowler v. Coster*, 10 B. & C. 427, there had been three commissions against the defendant; the third was insisted to be a void commission, which it could not have been unless 6 G. 4, c. 16, applied to commissions issued under the previous statutes relating to bankrupts. That Court then acted on the principle that section 127 was applicable to that case, nor can its judgment be otherwise supported. In *R. binson v. Score*, 3 B. and Ad. 338, there had been one commission before 6 G. 4, c. 16, and another after. The defendant when sued pleaded bankruptcy. I agree that it was not necessary in that case to decide whether stat. 6 G. 4, c. 16, applied to commissions founded on 5 G. 2, c. 30; for either 6 G. 4, c. 16 does or does not apply to bygone commissions; if it does not, you have a discharge valid under 6 G. 4, c. 16, because you have one commission only, and cannot count preceding commissions; if 6 G. 4, c. 16 does apply, and you can count them, then sec. 127 of 6 G. 4, c. 16 is a discharge; for it would be most unreasonable that he should be sued when he could not be taken in execution, and when he could have no property liable to an execution. It was argued on 6 G. 4, c. 16, and its operation; and the Court expressed their opinion, after consideration, that it was a case within sec. 12, applicable to discharges by commission previous to 6 G. 4, c. 16. We are of opinion, on the contrast of the language of 6 G. 4, c. 16 with that of 5 G. 2, and of those two cases, that this case is within 6 G. 4, c. 16, and that you may apply that act to bygone commissions issued under 5 G. 2, c. 30, or 5 G. 4, c. 98. Mr. *Follett* pressed that such a decision would take away from assignees of an insolvent their chance of obtaining his future property. No doubt it will have that operation; but we think that so minute an interest in those assignees as not to affect the general interest conferred by this act; and that our decision, by taking away the previous competition among creditors, does not militate against the construction which we feel ought to be given to 6 G. 4, c. 16.

*Elston v. Braddick*, 4 Tyr. 122.

## REVIEW.

*The Conveyancer's Assistant; or, a Series of Precedents in Conveyancing and Commercial Forms, in Alphabetical Order, after the manner of Jones's Attorney's Pocket Book, adapted to the present State of the Law and the Practice of Conveyancing; with copious Prefaces, Observations, and Notes on the several Deeds, and the late Real Property Acts, &c. By George Crabb, Esq., Barrister at Law. In Two Volumes. London: Henry Butterworth. 1835.*

THE state of legal literature, like that of every other branch of authorship, has undergone great changes during the last twenty or thirty years, and more especially in the latter part of that period. The number of professional authors has greatly increased, and the particular subjects on which they write are more amplified and frequently more subdivided amongst various writers than formerly. We are no longer content to follow in the old tracks, publishing new editions of standard works, and rarely attempting to improve even the arrangement and method of the original compilations. If a large field of legal disquisition has been so occupied that but little distinction can be gained in re-tracing it in a different manner, the writer selects some prominent or important part which has not been exhausted, and cultivates it to the highest degree of which it is capable—thus raising to himself a reputation for a more searching and profound, though a less extensive production. There can be no doubt that all branches of the profession are benefited by these recent improvements in the exposition of all the most minute parts of our system of jurisprudence and of practical law.

Amongst the books familiarly in use in a solicitor's office, were many of a very useful, though humble description, such as *Impey's Practice*, and *Jones's Attorney's Pocket Book*,—the one furnishing the articulated clerk with plain, concise, and simple directions in all parts of the practice of the Courts, and the other supplying such forms and practical instructions in conveyancing as were of ordinary and constant use. There was, of course, on the shelves of the solicitor's office, one of the approved *Digests* or *Abridgments of the Law*, accompanied by *Blackstone's Commentaries* and *Burn's Justice*. With this humble library the unambitious practitioner felt himself at the commencement of his labors sufficiently

provided for his professional career. For the rest he acquired knowledge as he obtained business; and in all cases of difficulty he resorted to the advice of his pleader or his counsel; and it was by slow degrees that the Reports and other extensive works were added to his store. The state of things is now considerably changed. The practitioner considers it necessary to possess a more extended collection of treatises; and the learning and industry of the bar has kept full pace with the wants and interests of the profession.

The volume before us, in some measure follows the beaten track of one of the books to which we have referred—grafting itself on the reputation of its fore-runner, and thus securing the suffrages of those who are influenced by custom rather than novelty.

It may in some degree enable our readers to judge of the utility of the work, whilst it is due to the author himself, to permit him to state his own views in re-occupying the ground previously taken by the compilers and editors of "The Attorney's Pocket Book."

"The utility of Jones's Attorney's Book, as an epitome of conveyancing, being sufficiently established by the number of editions it has already passed through, and the number of respectable Editors by which it has been revised, no apology is necessary for the attempt which is now made, to offer a work to the profession, similar as to its brevity, comprehensiveness, and practical utility, but embracing a greater variety of matter more fitted for modern practice. By rejecting all superfluous repetitions, and adopting various modes of abridgment, particularly the abbreviations used in one of the editions of that work, space has been found for the admission of every precedent and form applicable to the ordinary transactions of life; the greater part of which, have the recommendation of being taken from draughts of actual practice from the pens of the most eminent modern conveyancers. The prefaces and prefatory observations have been compiled by the editor, not to serve as complete treatises, but simply to direct the attention of the reader to the most important points of law connected with the subject matter of the work.

"Although no ordinary portion of labour and attention has been bestowed upon this work in its passage through the press, yet the editor regrets that, owing to its peculiar nature, it is not entirely free from typographical errors; but he has the satisfaction of being assured, that no errors have escaped the press which are in the slightest degree calculated to affect its practical usefulness, except those mentioned in the 'Errata,' the Table of Cases, and Indexes, which principally relate to the references."

The following is a brief outline of the contents of the work:

Acknowledgments, acquittances, acts of parliament, admittances, agreements, annuities, appointments, apprenticeship, arbitrations, assignments, attornments, bankruptcy, bargains and sales, bills of sale, bonds, charges, compositions, conditions of sale, confirmation, copartnership, covenants, declarations of trust, defeasances, demises, deputations, disclaimers, dower, enfranchisements, exchanges, feoffments, fines and recoveries, gifts, grants, indemnities, leases, licences, memorials, mortgages, nominations, notices, partitions, powers of attorney, presentations, purchase deeds, recitals, releases, renunciations, revocations, apperparation, settlement, shipping, surrenders, warrants of attorney, wills.

Each of these classes of conveyancing forms is preceded by a short treatise, defining the nature of the instrument, and stating the law relating to it, with the several authorities, in a concise, and we think a careful manner. It would be beside our purpose to institute a comparison between the present and other collections of conveyancing precedents, or between the notes and dissertations of Mr. Crabb and those of his predecessors or contemporaries. The design he has had in view, which we have quoted from his Preface, appears to have been well fulfilled. For ordinary purposes, and as an every-day-book, Mr. Crabb's Collection will materially assist the conveyancing solicitor. We are bound, however, to say that it cannot supersede the larger Collections of Precedents, nor the works on the Law of Real Property and Practice of Conveyancing—an object indeed which could not have been expected, from the limited nature of the author's undertaking.

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*Reports of Cases adjudged in the Court of King's Bench, during the Reigns of Charles II., James II., and William III.* By Sir Bartholomew Shower, Knt., in 2 volumes, with Notes and References to former and later Reports, by Thomas Leach, Esq. The third edition: forming part of the complete series of Law Reports, containing additional Cases and Notes from MSS. of Sir Bartholomew Shower and others. By George Butt, Esq. of the Inner Temple. R. Pheney.

THIS, the third edition of Shower's Reports, by Mr. Butt, is rendered interesting in no small degree by the circumstances stated in the preface, which we submit to our readers.

The last edition, by Mr. Leach, was published forty years ago. The present contains twenty-five cases not before printed, some of them relating to the customs of London (of which Sir B. Shower was Recorder), and others to questions of public interest and judicial curiosity.

"The volume containing this accession to our stock of authenticated law cases, is deposited in the Library of the British Museum, with those numerous other relics of valuable literature, denominated the Lansdowne Collection.

"This manuscript was once the property of Mr. Umfreville: a gentleman celebrated for his antiquarian and legal knowledge, and for his collections of rare manuscript and printed productions, relative to the laws and constitution of this country.

"On the first leaf of the book is the following note by Sir Bartholomew Shower:—'A Report of diverse cases adjudged in Banco Regis, and other Courts, in causes wherein I have been of counsell, &c.' Mr. Umfreville has written under it, 'This MSS. greatly controls the printed Shower, and contains many good cases not printed, and seems to be his regulated collection of cases, prepared, as I conceive, by himself, and methodised from his note books with a view to the press. But his papers, after his death, falling into the hands of a bookseller, he (*causa lucri*), at different times printed his general collection, without due consideration had of these selected cases, which were the only cases, I conceive, Sir Bartholomew intended for the press.—E. U.' Mr. Umfreville remarks, 'Here are many good cases touching the customs of London, never printed;' and refers to all the cases in the autograph, omitted in the printed reports.

"It is much to be regretted that the papers from whence the first edition was compiled, had not been perused by some able, or at least careful person, who would have prevented the very absurd mistakes with which the first (and, consequently, the second) edition abounds.

"So far as it was possible, it is shewn in the present edition, in notes between [ ], how many errata of the two former editions have confounded the sense of the text; but where there was a mere verbal error, the correction has been made without a note.

"In the Library of the British Museum there are several manuscript notes to Mr. Hargrave's copy of the first edition of these reports, in the hand-writing of that learned individual; all of which (in the following pages) are distinguished by the initial letters of his name.

"The manuscript reports noticed by him as being in his own possession, '*pene me*,' as he styles them, are now in the well-known Hargrave Collection, also in the British Museum. And, to omit nothing which might render this third edition of Shower, perfect as the most approved written observations and opinions of learned men could make it; other

manuscript notes are inserted than those of Mr. Hargrave, but which that eminent lawyer set so much value upon, as to transcribe into his copy, prefaced by the following remark on the title page:—'Note, That the MS. references and notes placed between parentheses, are not by me, but were copied from another book.—F. H.'

"They are still preserved, in parentheses, in these sheets.

"Had Shower published his own cases, certainly he would have had due regard to their times of occurrence; for in his manuscript, the reports in the reigns of Charles the Second, James the Second, and William and Mary, follow consecutively; but in the cases printed, no such order is observed, and it is now too late to attempt a different arrangement, since that would interfere with all the citations of these reports in books hitherto published.

"One whole year's cases, not before printed, will appear in this edition, *viz.* from Michaelmas Term, 3rd James the Second, to Michaelmas Term, 4th James the Second; besides others introduced in their proper places.

"No alterations have been made in extracting the cases from the manuscript, except in assimilating the orthography to that which was used by the last editor, whose 'marginal abstracts' have not been touched, unless when too prolix: or when there has been an obvious, though unaccountable mistake as to the decision; or when, after his elaborate examination of contemporaneous reports, Mr. Leach has (without an explanatory note) made the marginal analysis a compendium of the case as given in other books, rather than by our author."

Such is the present editor's account of the nature of his labors; and we think he has not over-rated the value of this part of the series of the early reporters now submitted to the profession. If the other portions of the series (but none of which, except the first, have we seen,) are equal to the present number, we think they will deserve the encouragement of the profession.

The preface contains a biographical notice of the learned reporter, from which we make the following extract:

"Chalmers, in his Biographical Dictionary, tells us that few particulars of the early life of Sir Bartholomew Shower are on record; but the learned Reporter has himself informed us not only when and where he was born, but when, where, and by whom he was christened; at what age he came to London; from whom and where he received his education; when he was admitted of the Middle Temple; when called to the bar; and when, where, and by whom, but not to whom, he was married; neither does he allude to his brother, an eminent nonconformist divine, and celebrated writer and defender of the tenets of his party.

"Chalmers supposes that the two brothers were of very different sentiments; and he

shews the divine (the senior) to have been four-teen years the survivor of the lawyer, who died in December, 1701, and was buried on the 12th of that month at Harrow-on-the-Hill, near to which he had resided, at Pinner Hill. Thus departing this world, when he had scarcely completed his forty-third year, before which period some of our greatest lawyers have scarcely become known to the public.

"That Shower was soon distinguished as a person of extraordinary talent is unquestionable; for at the age of twenty-seven, after being only five years at the bar, and when there was no dearth of eminent lawyers, he was selected as Deputy Recorder, by Sir John Holt, immediately on that great man being made Recorder of the City of London: and 'under him,' says Shower, 'was I Deputy Recorder, and kept the sessions often.' 2 Show. Rep. 466.

"All circumstances concurred in indicating the high honor of the two appointments: the city had then lost its franchises, and Sir John Holt himself was appointed, not by the city, but by the king's letters patent.

"Hence, perhaps, the jealousy of professional rivals, and the keeping in the back ground the name of a man, enviable for enjoying the favorable opinion of the brightest luminary that ever adorned the seat of Chief Justice of the Court of King's Bench. But we may not be surprised that so little has been said of Shower, since it was a complaint that the General Dictionary, the Biographia Britannica, and the Biographical Dictionary, contained no notice of his illustrious patron; of whom it is said, by his first biographer, 'there never was an abler, a more unbiassed and upright judge than the Lord Chief Justice Holt, since England was a nation.'

"From the period when Shower (at the young age of twenty-two) was called to the bar, till he was Deputy Recorder, at twenty-seven, the House of Commons was making sad havoc amongst those lawyers most prominent in political interference. They expelled Sir Francis Withens, and sent him to the Tower for being an 'Abhorrer;' for which offence he had been knighted but a few months before, when he presented an address to the King from the City of Westminster, 'abhorring' the tumultuous petitions for the sitting of the parliament; and in the same year they ordered an address for removing Sir George Jefferyes from all his offices. They voted an impeachment against the Lord Chief Justice North, for drawing up the proclamation against petitioning for a parliament. The like against Sir Wm. Jones, Justice of the King's Bench; and against Sir Richard Weston, Baron of the Exchequer; and articles of impeachment were, in the same year, drawn up against the Lord Chief Justice Scroggs, principally for discharging the Grand Jury when a presentment of recusancy was about to be preferred against the Duke of York.

"But our author was either, not a great political offender; or he was so good a manager as not to let his zeal outrun his discretion.

Yet there is one pamphlet attributed to him in 'vol. 123 of the political tracts without dates,' in the British Museum, bearing this title, 'The Magistracy and Government of England vindicated, in three parts; containing, 1st. A Justification of the English method of Proof against Criminals, &c; 2d. An Answer to several Replies, &c; 3d. Several Reasons for a General Act of Indemnity.'

"The first division is a masterly defence of the proceedings against Lord William Russell, for treason; with quotations from the law books and cases, in support of the author's opinions, and in contravention of some pamphlets of a different tendency: the second part is written with considerable humour; and the whole is worthy the perusal of the lawyer or politician interested in such studies.

"From the first part, the reader is presented with a specimen of the author's pamphleteering style:

"'In petty corporations, they who have most complained of others' hardships, have frequently outdone their predecessors, when once they have got their places. A whining, complaining servant, doth often prove a peevish, imperious master; and I am sure, in the Inns of Court, the most noisy, troublesome, and mutinous students and barristers, make the stiffest and most magisterial benchers.

"'I make no application: for I leave the reader to do what he pleaseth. Better things are to be hoped of all who are concerned in public governments.'

"This pamphlet was probably written soon after the execution of Lord William Russell, in Lincoln's Inn Fields, on the 21st July, 1683, for being concerned in the Rye House Plot.

"At the age of twenty-nine, Shower was knighted, and made King's Counsel and Recorder. He was removed from the Recordership upon the restitution of the city franchises by King James; and was subsequently engaged in numerous cases of great public and private importance.

"He was counsel for Lord Banbury in 1694, when Lord Chief Justice Holt delivered his famous judgment for the defendant, which so offended the Peers, that a Committee of the House summoned his Lordship to give his reasons for his decision; but he disdained to comply with such extra-judicial proceedings, and maintained the independence of the bench, even though threatened to be sent to the Tower.

"Shower's acuteness, and versatile talent in the intricacies of special pleading, and in criminal law, were secondary only to his profound learning in the laws of real property; and if to these acquisitions be added his intimate acquaintance with the laws and customs of Parliament, there is every reason to believe that (excepting Holt himself) Sir Bartholomew Shower was the most accomplished lawyer of his time."

## DECISIONS ON THE NEW PLEADING RULES.

Among the various changes effected of late years in the practice of the superior Courts of Common Law, none have been more important than those consequent on the new Rules of Pleading. Yet so great has been the anxiety of practitioners as to the effect which the Courts would be disposed to give to them, that exceedingly few decisions on them, either in banc or at *nisi prius*, have been pronounced. Such as the Courts have pronounced, together with some observations, we shall now lay before our readers.

By the second branch of the fifth Rule it is ordered, that "several counts shall not be allowed unless a distinct subject matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or cognizances be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each." As to the construction of this rule it has been decided by the Court of King's Bench, that although there is but one transaction there may be various causes of action contained in it, and therefore, in such a case, the plaintiff is not confined to one count, but he may introduce into his declaration a count for each separate cause of action (*Guest v. Everett*, ante, p. 75); that was an action against the sheriff for allowing a defendant to escape after he had been arrested. It was proved at the trial that the sheriff had had an opportunity of arresting the defendant, but had not availed himself of it. This evidence, of course, did not support a count for allowing the defendant to escape after effecting an arrest. An application was then made to the learned Judge who tried the cause to amend the declaration according to the facts, pursuant to the 3 & 4 W. 4, c. 42, §§ 23 & 24. The learned Judge reserved the question as to the plaintiff's right to amend under such circumstances, for the consideration of the Court above. A rule was accordingly obtained for the purpose of considering the question. On granting the rule *nisi*, Mr. Justice Patteson there observed, "in this case, it is true, there was but one transaction, but there might in one transaction exist several causes of action. For instance, there might be a time when the sheriff might have arrested the party and had not done so, and he might also immediately afterwards have arrested the party, and permitted him to escape. If that were so,

and only one count was introduced, the present case is not within the act of parliament. It is, however, proper that this matter should be discussed." Lord Denman, C. J., Taunton, J., and Williams, J., concurred in this opinion of Mr. Justice Patteson. It is more than probable, therefore, that when the rule comes to be considered, such will be the decision of the Court.

Next, by Rule 8, it is directed, that "the name of a county shall in all cases be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff; and no venue shall be stated in the body of the declaration, or in any subsequent pleading." The introduction of a venue into the body of a declaration being a violation of a rule of pleading, and Rule 6 of these Rules, as to applications to a Judge for the purpose of amendment, applying only to unnecessary counts and pleas, it should seem that the proper mode of taking advantage of such improper introduction would be by demurrer. In the case of *Harpur v. Chamneys*, 2 Dowl. Prac. Cas. 680, and of *Townsend v. Gurney*, ante, p. 110, and in the case of *Fisher v. Snow*, MS., before Mr. Justice Williams last Michaelmas term, it was held to be only a ground of application to a Judge at chambers to strike it out.

By Rule 17, the form of a plea of payment of money into Court is given. After alleging the fact of bringing the money into Court, it proceeds: "and the defendant further says, that the plaintiff has not sustained damages (or, in actions of debt, that he is not indebted to the plaintiff,) to a greater amount than the said sum, &c. in respect of the cause of action in the declaration mentioned; and this he is ready to verify." What will be the effect of the plea has not yet been decided: but it is evident that in many cases it may be employed with nearly the same effect as the General Issue formerly produced, viz. putting the plaintiff on the proof of his whole case. Thus, supposing the defendant to pay into Court a sum of 10s., at the same time alleging, in the language of the plea, that the plaintiff had not sustained damages, or that he was not indebted to the plaintiff to a greater amount than 10s., the plaintiff must of course, if he wished to recover more, proceed on the proof of his whole case. This will go a great way towards nullifying the Rules, which seek either to abolish the General Issue, or annul its effect.

With respect to the action of *assumpsit*, it is directed by Rule 2, under the head of that action, that "in all actions upon bills of exchange and promissory notes, the plea of non-*assumpsit* shall be inadmissible in such actions; therefore a plea in denial must traverse some matter of fact: for instance, the drawing or making, or indorsing or accepting, or presenting, or notice of dishonour of the bill or note." And by Rule 3, under the same head, "all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be void or voidable on the ground of fraud or otherwise, shall be specially pleaded." On these two Rules it has been decided by Mr. Baron *Alderson* at *nisi prius*, in a case where an acceptor of a bill of exchange denied the consideration and indorsement only, that he admitted the acceptance by himself.

As to the actions of Covenant and Debt, Rule 2, under that head, contains these words: "the plea of *nil debit* shall not be allowed in any action." But by Rule 3, which immediately follows, a form of the general issue in actions of debt is given in these words:—that "he never was indebted in manner and form as in the declaration alleged." In one case at *nisi prius*, before Mr. Baron *Parke*, where a defendant had improperly pleaded *nil debit*, his Lordship discharged the Jury from finding a verdict, because that plea having been altogether abolished by Rules of Court, which had the force of an act of parliament, there was in fact no issue on the record for the jury to try. In another similar case the decision of Mr. Baron *Parke* was mentioned to his Lordship. Mr. Justice *Patteson*, however, would not discharge the jury from finding a verdict, but left it for the defendant to take advantage of the state of the record after verdict, by application to the Court above. The probability is, that if the question were raised before the full Court, it would be held that the Jury ought not to be discharged from finding a verdict, as there would be in fact an issue on the record, though an informal one. There would be on the record a general issue, though informally pleaded. The proper course, therefore, it is conceived, for the plaintiff to take advantage of the plea thus improperly pleaded, would be either by signing judgment for want of a plea, by demurrer, or (by analogy of the before-mentioned cases, as to the improper introduction of a venue in a declaration) by applying to a Judge to strike it out.

We shall for the present here close our remarks, but shall from time to time, as occasion offers, continue them on this very important subject.

## DOUBTS ON THE NEW STATUTES.

Permit me to invite the attention of your correspondent, S. W. S. vol. 8, p. 460, to the following case, under the Exchange Act, which, if suffered to remain on the statute book, will immortalize the name of Mr. Slaney as a legislator. *A.* has let a farm, consisting of 60 acres of inclosed, and 97 acres of open field common land, in the parish of *B.*, to *C.*, on a fourteen years' lease, at a rent of 130*l.* *D.* and *A.* are contemplating an exchange of 34 acres of the open field land, for about 10 acres of land in *E.*, lying most convenient to *A.*'s mansion in *B.*, but most inconvenient for *C.*, being two miles from his other land.

Has the tenant such an interest within the words of the statute as to have a right to object to the exchange? if so, who is to pay his costs? and as the 10 acres are not worth to him one-half the 34 acres, has he any, and what remedy, against his landlord, under his covenant for quiet enjoyment, the breach being the consequence of his own act?

X. Y.

## THE LAW AS TO ILLEGITIMATE CHILDREN, UNDER THE POOR LAW AMENDMENT ACT.

THE alteration of the law relating to Illegitimate Children, chargeable to the parish, *born after the passing of the act*,\* having attracted much attention, it may be useful to our readers to be reminded of the effect of the new clauses on this subject. Referring to our "Commentaries on the New Statutes passed in 4 & 5 W. 4," pp. 48—52, we may add the following explanations, given by Mr. J. M. White, the solicitor employed in preparing the act, in his "Remarks on the Poor Law Amendment Act, as it affects Unions or Parishes under the Government of Guardians or Select Vestries."

"The bastardy laws are varied by these clauses, so far as they affect, 1st, the woman, by exempting her from liability to be imprisoned as a lewd woman, or removed, when with child, as being chargeable; and from all the accompanying exposure and shame of pe-

\* The old law remains in full force, as to bastards born before that period.

rochial investigation previous to the birth of the child, or afterwards, until the parish is called on for its support. And, on the other hand, she is made liable to the support of her offspring, which is to follow her settlement.

"2dly, As they affect the man, by exempting him from liability to be charged as the putative father before birth, and compelled to enter into recognizances with surety, without power of appeal, or of rebutting the oath of the woman, and to be imprisoned if the recognizances were not duly given. And after birth he will be chargeable only with monies actually expended for the maintenance and support of the child; and all liability ceases on the child attaining seven years of age. Corroborative evidence of the woman's oath is also required before the affiliation can be made; and when charged, he is required, after notice, to enter into his own recognizance to appear. If the order be made, the remedy, in default of payment, is by attachment of wages, and he is no longer subject to imprisonment.

"3dly, As they affect the parishes, sums actually expended can alone be recovered, and the order must be made at the quarter sessions, at the risk of costs, if the evidence, which must not be that of the woman only, be not sufficient to charge the man.

"The general effect is to place the woman in the situation of a widow with children. It is not thought a hardship that a widow, if she be able, should maintain her children; and although a girl with a bastard may not meet with the sympathy which a respectable widow obtains, the irregularity of the former ought not to be made the ground for any special provision in her favour. Beyond this provision of maintaining her child, the alteration is wholly for her benefit. Under the old law she had no claim on the father, nor on the parish, but what is still left to her; for if she cannot maintain herself or her child, she will of course apply to the parish and be relieved, as a widow would.

"There is no doubt that the alterations are in favour of the man, but not at the expense of the woman. The chief opposition to the alteration of the old law, however, in the latter part of the discussion, was based on the alleged cruelty of throwing the burthen on the woman and not on the man. As between the two, no other law ever existed. The parishes, it is true, have had their remedy much curtailed, but its mode of operation, and the gross abuses which the old law has led to, have rendered this remedy very equivocal in its character. It is doubtless right, in a penal point of view, to punish an offender; but it is also the undoubted right of an accused person to have his crime proved by clear and disinterested evidence. It cannot be denied, that the single evidence of a woman likely to become chargeable to the parish, unless the parish can, by her aid, fix the burthen on some one else, is as unlike the evidence usually required for a conviction in our courts of justice as possible. There may be great difficulty in obtaining other evidence than that of the mother in a

case of affiliation; but the same difficulty occurs in a case of action for loss of services, where the daughter or servant is examined as the chief evidence, and other evidence is generally required and given before a verdict can be obtained. In an action for criminal conversation the evidence of the female is excluded. And in all cases of conviction on the testimony of an accomplice, corroborative evidence, no matter how difficult to be obtained, is generally looked for before a verdict of guilty is pronounced. It may also be remarked, that if the two systems be compared, there is now on the part of the parish no greater difficulty in obtaining further evidence to support, than there was formerly on the part of the man to rebut, such a charge. In Scotland, besides the woman's oath, further *presumptive* evidence (termed *semiplena probatio*) is required. But there these cases are treated as matters of action by the woman against the man, and on conviction an annuity of 10*l.* to 15*l.* is generally awarded for the maintenance of the child during its period of nurture—rarely exceeding seven years. If the legislature should think fit to introduce such a remedy into England, it can of course do so; but none such has yet existed. Or if it choose to treat the man as a criminal, instead of a debtor to a parish, this novelty might also be tried; but it is obvious that they are points distinct from any question of poor laws. Perhaps, if local courts be introduced, actions for loss of services might be allowed, where the damages sought are under a limited amount. This would be only an alteration of the present law, and so far an improvement that it would be putting a remedy within the reach of humble suitors, who could not strictly sue *in formâ pauperis*, as they must at present, unless they are content to incur heavy costs.

"It was further urged, that compelling the woman to maintain her infant would lead to infanticide, and exempting the man would be an encouragement to seduction. It is impossible to believe that both sexes are so depraved as these arguments assume. If murder and incontinence be really the characteristics of Englishwomen, and the arts of the seducer and the profligate those of the men, the preservation of the old bastardy law was little to be relied on as a preventive or a cure, or the introduction of the new to be feared as an encouragement."

## LEGAL ANTIQUITIES.

### ORIGIN OF PARLIAMENTS.

[Some of the Notices on the Journals for the next session, may render the following Paper, from a Correspondent, not unacceptable to our readers.]

Considerable doubt appears to exist among modern writers as to the origin of the English Parliament. Some believe it to have existed

in the island even prior to the time of the Saxon invasion; whilst others maintain that it was altogether unknown in Britain till the arrival of that people, who imported it from their mother country. Some again believe it to have been introduced at the time of the Norman Conquest, or soon after; but many more, with greater probability, think it for the most part peculiar to the island, and to have been the growth of time.

From a view of the chronicles of our earliest history, it seems that the Anglo-Saxons possessed at least the *rudiments* of our present constitution, and that *expediency* gave birth to the parliament. It is true, representative commoners, and a peerage like the modern, appear to have been altogether unknown to that brave people; yet, undoubtedly, it was they who sowed the seeds thereof, which gradually grew up and ripened through a long course of succeeding ages. Indeed, the refinement of our present parliamentary system seems incompatible with a rude people. And we know for a certainty that a division of the lords and commons was not effected till many centuries after the Norman Conquest.

With a view to prove the truth of our theory—that the foundation of our parliament was laid by the Saxons,—we will take a cursory view of the Anglo-Saxon government, from the period of their establishment in Britain, till the time of Athelstan, in whose reign the whole island was for the first time totally subdued.

The power of the Saxon princes was never absolute, but limited. They were regulated and controlled by the *Witenagemote* or national assemblies. These assemblies were composed of all the principal landed proprietors in the kingdom, namely, prelates, earls, and thanes<sup>a</sup>. Freemen, not noble, seem to have had no influence therein; for all those who possessed a certain quantity of land (the only wealth then known) were raised to the rank of a thane. Serfs, or slaves, appear also to have been totally excluded, even when they possessed a sufficient quantity of land to have entitled them to vote had they been free. Originally every petty chief had his *Witenagemote*; but after the subordination of their principalities to Wessex, and the rise of a single *Witenagemote* for the whole kingdom, it was *scarcely possible*, says an historian, *for the poor or the distant to be present*. In order, therefore, to remedy this evil, Athelstan sent commissioners to hold *shire-gemotes*, or county meetings, where they proclaimed the laws made by the king and his counsellors, which being acknowledged and sworn to at these *folk-motes*, became by their assent completely binding on the whole nation.

Is there not here, we will ask, a strong resemblance to the modern parliament? And when we make allowance for the long period of nine centuries, which has elapsed since the

days of Athelstan, and take into consideration those extensive mutations which of necessity follow the fortunes of every community,—revolutions, tyranny, wars, conquests, manners, customs, civilization, arts and sciences, and the united experience of the learned and the wise of every succeeding age,—we cannot but conclude that that monarch was the *founder* of our *representative* system,—that the adoption of representatives to parliament *superseded*, and was only an *improvement* on, the scheme invented and established by him, when all the petty chiefs of the isle were subdued, and their principalities united to the Saxon power.

R. S.—t.

## SELECTIONS FROM CORRESPONDENCE.

No. LXXXVI.

ACKNOWLEDGMENT OF LEASE FOR A YEAR.  
(*Vide* 8 L. O. 236, 314, 434.)

To the Editor of the *Legal Observer*.

Sir,

This point is so important with respect to hy-gone cases, where the lease for a year has not been acknowledged by the wife, that I trust you will allow some further observations on it. I cannot but question the opinion of H. M. (p. 424), and I think he must hope with me he is wrong, that “when she has the freehold, there cannot be a doubt of the necessity for her not only acknowledging, but also being made a party to the lease for a year.” Now certainly, the *latter* would be a necessary conclusion, for a party (whether in character of a wife or otherwise), acknowledging a deed to which he or she is not a party, seems to be a solecism. But with respect to the first proposition, I humbly submit, that (at least in cases where the husband is seized of or entitled to the freehold in right of his wife, either at common law or under a settlement; and further, where he has only a chattel *possessory* interest, or, perhaps, is merely in *possession* rightfully or even tortiously) the husband’s lease for a year operates to transfer such possession to the lessee and intended releasee; and if so, it will be a necessary consequence that the subsequent release will be effectual for the enlargement of that estate by the husband and wife—the latter acknowledging the release only—with the same effect as under the now abrogated law and practice of Fines and Recoveries, and the deeds connected therewith; for it was never yet questioned that either of those assurances operated to convey the wife’s freehold, although in most instances that have occurred to me she did not execute, nor was made a party to the lease.

I will put the argument also upon other ground. The wife cannot, at common law, be seized or possessed of anything. The legal estate in her freehold is vested in the husband during the coverture: consequently no act or

<sup>a</sup> Perhaps it is hardly necessary to remind the reader that the Saxon thane is represented in the English gentleman of the present day.



deed of hers can operate to transfer the *possession*, which is effected only by the husband: her execution, therefore, and acknowledgment of the lease is nugatory; nor did her deed, whether of release or of grant, under the old law, operate as a *conveyance*, *quoad* the wife; but it was the *matter of record*, (fine or recovery) that worked such a result, and which would have availed equally to it, *without any deed*; it being only necessary for declaring the *uses*, if the husband could not alone have accomplished that object; and at the present time it is the *statute* (3 & 4 W. 4, c. 74, s. 77) which is the magic wand which causes the wife's estate to pass by her deed acknowledged, and not a conveyance at common law or under the Statute of Uses, though one or other is still necessary for conveying the estate or interest of the husband, the words being, "it shall be lawful for every married woman *by deed* to *dispose* of lands, &c." Now I conceive that so far as she is concerned, it is immaterial what form of conveyance is adopted, so as she execute and acknowledge a *deed*, purporting to pass her estate.

I have thus offered my opinion rather positively, but I trust it will not be considered dogmatically; for a confident mode of expression is preferable to hesitation, when it does not exist in the mind: but I beg to say, it will be both a pleasure and advantage to me, if wrong, to be corrected by the arguments of your more experienced and intelligent correspondents. But, Sir, I cannot but deprecate all those opinions that are founded on mere expediency, — such as "making assurance doubly sure;" for in common with most other practitioners, I wish to have the point established, whether there is or not a *necessity* for the wife's acknowledgment; since, although looking to the future, it may be easy to render the question valueless, it is most important for the interest of parties to whom estates have been conveyed or so intended (and I am acquainted with several instances) without complicity with that form.

J. A. M.

Sir,

Conceiving Y. Z. (*ante*, p. 56) to have formed an erroneous opinion on this important subject, I take the liberty of drawing the attention of the profession to the 77th and 79th sections of the act for abolishing Fines and Recoveries, on which, it seems to me, this question rests. By the former of those sections, a married woman may dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure, "except that no such disposition, release, surrender or extinguishment shall be valid and effectual, unless the husband concur in the deed by which the same shall be effected, *nor unless the deed be acknowledged by her as hereinafter directed.*" The latter section (79th) then enacts, "that every deed to be executed by a married woman for any of the purposes of this act, shall, upon

her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a Judge, &c." Now, as the lease and release have the same power or effect to pass the estate of a married woman, to do which, prior to the passing of the 3 & 4 W. 4, c. 74, a fine was necessary; it is quite clear that such lease and release are executed by her for the purposes of that act, and must therefore be acknowledged by her accordingly: — *ex. gr.* I submit, that whenever a lease for a year is executed by a married woman, to give effect to a conveyance made by her, it must be acknowledged according to the provisions of the statute, otherwise it will be inoperative as to the interest intended to be conveyed by the feme covert.

S. W.

#### PLEADING SEVERAL MATTERS.—NEW RULES.

Sir,

I beg to send you the following note of a case in the Exchequer in Michaelmas Term last:—A defendant pleaded the General Issue and the Statute of Limitations, without having taken out a summons to plead several matters, and without having obtained a counsel's signature to the plea. The defendant got a week's time to plead on the 3d. On the 7th (I think) he took a summons for particulars of plaintiff's demand, which had not been delivered with the declaration, which gave him four days longer (until the 11th) to file his plea. He however pleaded within the time, and the plaintiff signed judgment on the 10th, treating the plea as a nullity. The defendant moved to set aside the judgment for irregularity, on two grounds, —first, that under the New Rules the plea of the Statute of Limitations did not require counsel's signature; and, secondly, that the plaintiff had no power to sign judgment until the time for pleading had expired. The plaintiff's counsel argued *contra*, and on the latter point urged that the defendant had waived the time for pleading by filing a plea. The Court decided in favour of the plaintiff, on the first question, and also declared that judgment was properly signed on the 10th. Shortly after the question had been argued, the defendant's counsel referred the Court to a case precisely in point, in (I think) 1 Barn. & Adol., in which the Court were of a contrary opinion. Lord Lyndhurst, in consequence of that case taking priority of this, said, that as it was of so much importance, the Court would enquire what the practice was, and after considering the question, would decide the point, in order that a *general rule* might be established. Unfortunately do not recollect the name of the case, nor do I know the counsel engaged; but the Master will recollect, as he was referred to.

A SUBSCRIBER.

**RENEWAL OF ATTORNEYS' CERTIFICATES.**

Sir,

As your valuable publication has been greatly instrumental in effecting many of the judicious changes that have taken place in the law, I hope that by your continually animadverting on this unequal and unjust tax, with which the junior branches of the profession are now burthened, its abolition will be accelerated.

On reading your notice of this subject in the *Legal Observer* for 22d Nov., it appeared to me that you had omitted to mention the persons by whom this oppressive tax is most severely felt,—namely, by those young men, who, during the first few years of their practice, scarcely earn sufficient to pay for their certificates.

**ONE OF THE OPPRESSED.**

**STRIKING ATTORNEY OFF THE ROLL.**

In p. 39, *ante*, under the head of Attachment, at the conclusion, you state the case cited in 1 D. & R. 529, where the Judges intimated a doubt as to the propriety of an attorney remaining any longer on the roll, who kept out of the way to avoid personal service of a rule for paying money pursuant to the Master's allocatur. Permit me to refer you to a case (which may be of some importance to your correspondents), viz. *Rea v. Carpenter*, MS. H. 1825, (Chit. Archbold's Prac. p. 41, where an application to that effect has since been refused.

INQUIRER.

**ABSTRACTS OF RECENT STATUTES.**

**INSOLVENT DEBTORS IN INDIA,**

4 & 5 W. 4, c. 79.

This is entitled "An act to amend the Law relating to Insolvent Debtors in India," and passed 14th August, 1834. It recites the 9 G. 4, c. 73, and 2 W. 4, c. 43,—in the first of which certain provisions were enacted as to a commission of bankruptcy issuing against any such insolvent debtor as therein mentioned, and as to the proceedings consequent thereon; and amongst other things, that a certificate obtained under such commission should have the same force and effect in all places situate without the limits of the East India Company's charter, as if the same had been duly signed in the usual way after such bankrupt had duly surrendered and passed his last examination; and it was also provided, that whenever it shall be made to appear to the satisfaction of any court for relief of insolvent debtors, upon the application of any insolvent, his assignee or assignees, or any of his or her creditors, that the estate of such insolvent debtor which shall have come to the hands of the assignee or assignees shall have produced sufficient to pay

and discharge three-fourths of the amount of the debts which shall have been established in such Court, or the creditors to the amount of more than one half in number and value of the debts which shall have been so established, shall signify their consent in writing thereto, it shall be lawful for such Court to inquire into the conduct of the said insolvent, and if it shall appear to such Court that the said insolvent has acted fairly and honestly towards his or her creditors, such Court shall be fully authorized and empowered thereupon to order that the said insolvent shall be for ever discharged from all liability whatsoever for or in respect of such debts so established as aforesaid, and such Court shall, in the order to be drawn up, specify and set forth the names of such creditors; and after any such order shall have been so made no further proceedings shall be had in the matter of the petition before the Court, unless upon appeal made to the supreme Court of judicature of the presidency where such court for the relief of insolvent debtors shall be holden as thereby authorized.

But no such order as last aforesaid shall prevent any creditor who shall not have been resident within the limits of the charter of the said united company at any time between the filing of such petition and the making of such order as last mentioned, and who shall not have taken part in any of the proceedings under the said petition, from bringing any suit or action in the East Indies for the purpose of obtaining execution against the goods, estate, or effects of such insolvent for any unsatisfied claim of such creditor, nor from bringing any suit or action for such claim in any Court of the united kingdom of Great Britain and Ireland, or elsewhere without the limits of the said united company's charter, against such insolvent, in the same manner and with the like consequences and effects as if such order as last mentioned had not been made.

And reciting that it is expedient to extend and add to the provisions of the said acts, so as to give to insolvent debtors, being traders, who shall have acted fairly and honestly towards their creditors, an additional and more complete discharge, and also to render more effectual the means of obtaining such discharge, and at the same time to preserve to such insolvent debtors such relief as is already afforded by the said recited acts.

And that under the provisions of the 1 and 2 W. 4, c. 56, a fiat is issued in bankruptcy in lieu of a commission of bankrupt in every case where the Lord Chancellor, by virtue of any former act had heretofore power to issue a commission of bankrupt: It is therefore enacted,

1. That any person who now is or who shall hereafter become an insolvent debtor within the intent and meaning of the 9 G. 4, either upon petition filed, or by adjudication on an act of insolvency as therein provided, and who at the time of such petition being filed or adjudication made as aforesaid shall have been or shall be a person who, by 6 G. 4, c. 16, or by any act hereafter to be passed, would be deemed a

trader liable to become bankrupt, shall be at liberty, at any time not earlier than three months from the making of such assignment as in the 9 G. 4, c. 73, directed, or from any such adjudication of insolvency as therein mentioned (as the case may be), to apply by petition for his discharge to any one of the said courts in the East Indies for the relief of insolvent debtors, in the said last-mentioned act mentioned, as shall have already jurisdiction over the matter of his insolvency; and the principal officer of such court shall cause a notice of such petition to be forthwith inserted in the gazette of the presidency within which such court shall be holden; and the chief secretary of the government of such presidency shall, without delay, transmit to the Court of Directors of the said united company, by different ships, two at least of every such gazette which shall contain such notice as aforesaid, who shall, without delay, cause such notice to be inserted in the London Gazette; and all creditors of the said insolvent, either alone or as a partner with any other person or persons, and either within the limits of the said charter of the said united company, or elsewhere, who shall not within fourteen calendar months from the filing of such petition for a discharge as aforesaid, have given notice to the said court of his dissent from such insolvent having his discharge, shall be taken to have assented thereto; and thereupon, and at the expiration of the said fourteen calendar months from the filing of such petition for discharge as aforesaid, if it shall appear to such court that the said insolvent has acted fairly and honestly towards his creditors, and unless creditors to the amount of one-sixth in number and value of the debts that shall have been established in such court shall have given notice of their dissent as aforesaid, or unless a fiat in bankruptcy (not being a fiat issued under the provisions of the said recited acts "to provide for the relief of insolvent debtors in the East Indies,") shall have been sued out in England against such insolvent within the time herein-after provided, such court shall be authorized and empowered to order the discharge of the said insolvent from liability for debts, claims, and demands of and against such insolvent; and such order shall operate (save as herein-after provided) as a release and discharge from all debts, claims, and demands for which such insolvent was liable at the time of his petition for relief being filed, or of any such act of insolvency committed as aforesaid (as the case may be), and whether within the limits of the charter of the said united company, or elsewhere, and whether such debts, claims, and demands shall or shall not have been established in such court as aforesaid: Provided that such order shall not operate as a release or discharge of any person who was partner with such insolvent, or jointly bound or liable with him.

2. Provided, that in case of any fiat in bankruptcy shall be issued in England against any such insolvent trader as aforesaid, under the provisions of the 9 G. 4, or under the pro-

visions of any other act passed or to be hereafter passed respecting insolvent debtors in the East Indies, then and in such case such order for discharge as aforesaid shall not operate as a discharge of the debt, claim, and demand of any creditor who shall not have been resident within the limits of the charter of the said united company at any time between the filing of such petition and the making of such order as last mentioned, nor shall any such creditor be debarred from bringing any suit or action for such debt, claim, or demand in any court of the united kingdom of Great Britain and Ireland, or elsewhere without the limits of the said united company's charter, against such insolvent, in the same manner, and with the like consequences and effects as if such order as last mentioned had not been made.

3. Provided, that in such last-mentioned case, upon any application made to the commissioner acting in such fiat as aforesaid, to sign the certificate of such insolvent, and after the same shall have been signed by the requisite number of creditors under the provisions of the 9 G. 4, or any other act passed or hereafter to be passed respecting insolvent debtors in the East Indies, then if it shall be made to appear to such commissioners that such order for a discharge has been made by the court in the East Indies as aforesaid, and if such commissioner shall sign such certificate, he shall also certify in writing upon such certificate that such insolvent has obtained such order for discharge in the East Indies as aforesaid, and thereupon such certificate shall have the same force and effect, as well within as without the limits aforesaid, as a certificate duly obtained under the 6 G. 4, c. 16, or in any other act passed or to be hereafter passed respecting bankrupts.

4. That any such insolvent trader, who shall not be made a bankrupt under the provisions of the said act for the relief of the insolvent debtors in the East Indies, or of any other act passed, or hereafter to be passed, respecting insolvent debtors in the East Indies, if he shall, after such order for his discharge shall have been made as aforesaid, be arrested, or have any action brought against him for any debt, claim, or demand for which he was so liable as aforesaid, either within the limits of the charter of the said united company or elsewhere, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became insolvent, and may give this act and the special matter in evidence; and such order as aforesaid, duly sealed with the seal of the said court, shall be sufficient evidence in all courts and places whatsoever of all the proceedings precedent to such order being made, and of the same being duly obtained; and if any such insolvent trader shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before such order of the court for his discharge as aforesaid, it shall be lawful for any judge of the court wherein such judgment has been obtained, on such insolvent

producing such order as aforesaid, to order any officer who shall have such insolvent in custody by virtue of such execution to discharge such insolvent without exacting any fee, and such officer shall be hereby indemnified for so doing; and any such insolvent trader who shall be a bankrupt under the provisions of the said last-mentioned act, and who shall be arrested within the limits of the charter of the said company, shall be so discharged, and may so plead, and shall have otherwise such relief, within the said limits, as herein-before mentioned; and if he shall also obtain such certificate as herein-before provided, he may be at liberty to avail himself either of such certificate, or of such order of discharge as aforesaid, for the purposes of his discharge within the limits aforesaid.

5. That in case any fiat in bankruptcy (other than a fiat under the provisions of the 9 G. 4, or any other act relating to the insolvent debtors in the East Indies,) be issued against any such insolvent trader within the period of eight calendar months from the time of such petition for relief being filed, or of such adjudication of insolvency being made, as the case may be, and such insolvent trader shall be duly adjudged a bankrupt under such fiat, then and in such case such Court as aforesaid shall not be authorized and empowered to make any such order for discharge as aforesaid.

6. That after the expiration of such eight calendar months as aforesaid no fiat shall issue against any such insolvent, upon any petitioning creditor's debt due before the filing of such petition for relief, or such adjudication of insolvency (as the case may be); and in case any fiat shall issue against such insolvent trader as aforesaid upon a petitioning creditor's debt incurred subsequently to such filing of the petition for relief or to such adjudication of insolvency as aforesaid, such fiat shall not in any manner affect, invalidate, or interfere with the proceedings under the insolvency previously existing in the East Indies, nor shall the assignees under such fiat acquire any right or title to take possession of, demand, sue for, or recover any property or interest, real or personal, wheresoever situated, which belonged to such insolvent at the time of such petition for relief being filed, or of such adjudication of insolvency as aforesaid, but the assignee or assignees appointed by such court for the relief of insolvent debtors shall have the sole and exclusive right and title thereto; and all debts, claims, and demands due and payable to such insolvent at the time of such petition for relief being filed, or of such adjudication of insolvency as aforesaid, shall be established under such insolvency, and shall not be provable under such last-mentioned fiat.

7. By the 9 G. 4, all such insolvent debtors as therein mentioned shall, within the time also therein mentioned, deliver into the court a schedule containing a full and true account of their debts, estates, and effects as therein mentioned, and which schedule is thereby directed to be forthwith filed in the said court: And it being expedient that the creditors of such

insolvent debtors residing out of the limits of the said company's charter should have the means of inspecting such schedule with equal facility with creditors of such insolvent debtors residing within the limits of the said charter; it is enacted, that the principal officer of the said respective courts for the relief of insolvent debtors shall, without delay, transmit to the court of directors of the said company, by different ships, two or more copies of each such schedule, and the said court shall retain the same, and permit any person or persons being a creditor or creditors of any such insolvent debtor to inspect and examine at all seasonable times such schedule, and shall, upon the request and at the reasonable costs and charges of any such creditor or creditors (such costs and charges to be regulated by the said court), provide for him or them a copy or copies of any such schedule.

## ON THE PROPOSED ABOLITION OF THE GRAND JURY.

To the Editor of the Legal Observer.

Sir,

It is now generally well known that our legal institutions, both in theory and practice, have undergone, during the late administration, some very considerable and important alterations; the pruning knife has not been sparingly applied, whether judiciously or not must, I think, in many respects, be left for the test of time to determine. My only hope is, that the changes I speak of will in their operation eventually be calculated to benefit the many, and not confined to the good of the few. There is one feature yet in our wise laws which has not been abandoned, nor indeed subjected to the slightest variation—the principle of which, however, may be, in my judgment, not only renovated by sound judicious legislative enactment, but also partially restored to its pristine beauty—I mean the *grand trial by jury*. I have been led to these reflections by a promised motion of one of the honorable members for the town of Cambridge, for the abolition of the *grand jury*—the policy of which must remain in obscurity until it is developed by the eloquence and discreet judgment of that gentleman. Under these circumstances, and as the one system is so intimately connected and interwoven with the other, I am induced to forward you, for the pages of your journal, some readings from my note-book, on the supposed origin of the jury-trial, which, if acceptable, I will, with your permission, give in two letters.

### TRIAL BY JURY.

It has been a prevailing opinion, that trial by jury may be referred to the Anglo-Saxon age, and common tradition has ascribed it to the wisdom of Alfred. In an historical deduction of the English Government, an insti-

tion so peculiarly characteristic, deserves every attention to its origin; and I shall therefore produce the evidence which has been supposed to bear upon this most eminent part of our judicial system. The first text of the Saxon laws which may appear to have such a meaning, is in those of Alfred: "If any one accuse a King's thane of homicide, if he dare to purge himself (ladian), let him do it along with twelve King's thanes. If any one accuse a thane of less rank than a King's thane, let him purge himself along with eleven of his equals and one King's thane."<sup>a</sup> This law, which Nicholson contends can mean nothing but trial by jury, has been referred by Hickes to that ancient usage of compurgation, where the accused sustained his own oath by those of a number of his friends, who pledged their knowledge, or at least their belief, of his innocence.<sup>b</sup>

In the canons of the Northumbrian clergy we read as follows: "If a King's thane deny this (the practice of heathen superstitions), let twelve be appointed for him, and let him take twelve of his kindred (or equals), and twelve British strangers; and if he fail, then let him pay for his breach of law twelve half-marcs. If a landholder (or lesser thane) deny the charge, let as many of his equals, and as many strangers be taken, as for a royal thane; and if he fail, let him pay six half-marcs. If a ceorl deny it, let as many of his equals and as many strangers be taken for him as for the others; and if he fail, let him pay twelve oræ for his breach of law."<sup>c</sup>

It is difficult at first sight to imagine that these thirty-six so selected were merely compurgators, since it seems absurd that the judge should name indifferent persons, who without inquiry were to make oath of a party's innocence. Some have therefore conceived, that in this and other instances where compurgators are mentioned, they were virtually jurors, who before attesting the facts were to inform their consciences by investigating them. There are, however, passages in the Saxon laws nearly parallel to that just quoted, which seem incompatible with this interpretation. Thus, by a law of Athelstan, if any one claimed a strayed ox as his own, five of his neighbours were to be assigned, of whom one was to maintain the claimant's oath.<sup>d</sup> Perhaps the principle of these regulations, and indeed of the whole law of compurgation, is to be found in that stress laid upon general character which pervades the Anglo-Saxon jurisprudence.

ASPIRO.

*Gray's Inn.*

<sup>a</sup> Leges Alfredi, p. 47.

<sup>b</sup> Nicholson, *Præfatio ad Leges Anglo-Saxon.* Wilkinsii, p. 10. Hickes, *Dissertationes Epistolares.*

<sup>c</sup> Wilkins, p. 100

<sup>d</sup> Leges Athelstani, p. 58.

## THE DUTIES OF SOLICITORS.

The duties of solicitors relating to the ascertainment of facts, and the proof thereof; the statement of cases, and their personal attention in important matters, as stated by Mr. Chitty in his *General Practice*, vol. 2, pt. 2, pp. 21—24 are so important that we need no apology for extracting them; and we doubt not that the learned author will thank us for diffusing his advice amongst such of our readers as have not already noticed this part of his work. There are also various other hints and suggestions, for which we recommend them to consult the book:—

"It is scarcely necessary to observe, that every prudent attorney or solicitor, except in the clearest cases, where the precise evidence has been previously ascertained, should before he commences or defends any proceeding, be well assured that *sufficient evidence can be adduced*; and if his client be either too sanguine or hasty, it will be advisable to incur the expence of examining at least one or two of the principal witnesses, and that in the *absence of the client*, who is too apt to suggest facts to the witnesses, and who may too readily assent and thereby mislead. By this precaution a double advantage may be acquired, that of not only obtaining an accurate view of the facts, but also of eliciting evidence before the opponent and his witnesses have become cautious and guarded.

"Lord Tenderden observed, 'that an attorney who allows his client to proceed without pointing out to him the expediency of ascertaining the evidence, and that in the very *first instance*, and well considering the probable result, is guilty of grossly absurd and culpable negligence.' 1 Chitty's Gen. Prac. 440.

"If the law applicable to the facts should be at all questionable in the judgment of the attorney, then he should suggest to his client the expediency of taking an opinion of counsel, and obtain his authority for that purpose; and which case, when properly framed, with an *explicit* opinion of an experienced counsel favourable to the subsequent proceeding, will in general afford protection to the attorney, for any misapprehension on the advised right of the party, (*Kemp v. Burt*, 1 Nev. & Man. 262), and sometimes, probably in case of arrest, which turns out ill advised in point of law, by such opinions having been taken, a jury may be induced to moderate the damages, although the same would not, of itself, afford a legal bar to the action, because an arrest is not essential to the trial of a right. (*Ravensgar v. Macintosh*, 2 B. & C. 693; 4 Dowl. & Ry. 187; *S. C. Briston v. Heywood*, 1 Stark. R. 48; *Godefroy v. Jay*, 1 Moore & P. 236; 1 Bing. 616.) But a case stated in a *hurried manner*, without a *full and accurate disclosure of all the facts*,

and without being well assured by the attorney's own examination, that there is *legal* evidence to prove the facts, or a case stated so generally, and without sufficient specific questions so as to draw the *attention of counsel* to the important points, and to answer each in particular, will form no such protection; but, on the contrary, may induce suspicion, that, for the sake of having a suit or defence to conduct, the defendant has carelessly, or even purposely, neglected to raise the material points. And if in consulting a counsel upon an abstract, a solicitor should take upon himself to draw a conclusion from deeds, and do not lay the deeds and the whole of the facts before the counsel, and should err in such conclusion, a jury might find a verdict against him for his negligence, (3 B. & Cres 799; 5 D. & R. 517, S. C.) So if an attorney take too short an abstract of a will, and omit a material qualification of a bequest, and any consequent damages arise, he may be sued, (3 Stark. R. 154; 1 D. & R. 30, S. C.) If the opinion of counsel should be doubtful or ambiguous, it would then be proper to state a *further case*, or to see the counsel in consultation, until such an *explicit answer in writing* has been obtained, to a written statement, as will unquestionably sanction the attorney in his subsequent proceedings; and still, if there should be any doubt upon the result, the client should, in the presence of a respectable and disinterested third person, be requested deliberately to read the statement and opinion, and then in writing, reciting that a case has been stated and opinions obtained, direct precisely what shall be done. This was stated to be the duty of an attorney, by Lord Tenterden, and also accords with the opinion of one of the most eminent conveyancers and equity counsel of the present day, as regards the duty of an attorney, in taking an opinion upon a title, or upon the expediency of a chancery suit. An opinion of counsel upon an imperfectly stated case will very frequently mislead, although such opinion might be perfectly correct in itself.

"As regards this part of the duty of professional men, the observations of Lord Stowell are strongly in point, especially when the suit or proceeding is on behalf of illiterate or ill informed persons. 'The proctor has, in these cases, something of a public as well as private duty thrown upon him; something that, in such cases, he owes to the fair administration of justice, as well as to the private interests of his employers; the interest propounded for them *ought, in the proctor's own apprehension to be just, or at least fairly disputable*; and when such interests are propounded, they are not to be pursued *per fas et nefas*,' 1 Haggard's Reports, 222.

"Another hint may be useful, as well to clients as to professional practitioners, namely, to have it understood and expressly stipulated, that *matters of importance*, and especially of negotiation, where the skill and experience of a principal attorney may be most important for success, that such *principal* attorney should *himself* conduct the whole or a certain part of

the proceeding, and not hand it over to a clerk or third person to transact, and by which an otherwise successful result may be marred."

"Indeed, without any such stipulation, it appears from the observations of Lord Stowell upon the duty of a proctor, to be the duty of the principal attorney or solicitor himself so to act: for his lordship said, 'I adhere to the opinion I have expressed, that where an intercourse for such a purpose as the definite settlement of a claim is to take place, it is most effectually conducted by the proctors *themselves*, and not by their clerks; they have both a personal and legal weight, and an authority that can better support them against over-weening pretensions; and there is a direct responsibility belonging to them highly proper to intervene in any point so extremely important as the proposed final adjustment of a cause.'—And in that case he made the proctor pay all the costs, in consequence of his neglect of duty in that and other respects.—(*The Frederick*, 1 Haggard Rep. 220.)"

## SUMMARY OF THE EVIDENCE ON IMPRISONMENT FOR DEBT.

We deem it material to remind our readers (as suggested by a correspondent) that the doubts of the expediency of abolishing arrest in execution, are fully warranted by the state of the evidence before the commissioners.

"Of bankers, merchants, and dealers, by wholesale and retail, in various parts of this kingdom, there have been examined on this subject since the date of the original commission, 332; of attorneys, 102; of barristers, 11. Of the total number examined, not more than 61 have expressed any opinion favorable to the abandonment of arrest in execution, 201 have expressed themselves in terms from which no general conclusion can be distinctly drawn; the remaining 183 are apparently opposed to its abandonment.

"It is to be observed, too, that among the abolitionists, there are but a small portion who hold their opinion in an absolute form. The majority always suppose the possibility of substituting some other method as effective as that which they abandon, and less open to objection. But it will hereafter be shewn that this is a hopeless speculation, and that no satisfactory substitution for the existing practice can be made.

"Some weight ought also to be allowed to the example of other countries. The commissioners have, therefore, thought it right to investigate the subject in this point of view; and the result is, that in almost every European state the creditor, in whose favor judgment has been given, is permitted not only to seize the property, but (alternatively) the person, in execution; such, at least, is the state of law (as ascertained by the commissioners) in France, Spain, and the Netherlands, in Austria, Prussia, Hamburgh, Bremen, Lubeck,

Norway, and Sweden; and no exception has come to their knowledge, unless the case of Portugal is to be so considered, where the power of arrest is allowed to the creditor only under special circumstances. The same alternative right of proceeding against the person or property exists in all the United States, except in the district of Maine and at New York; and these exceptions are of a merely experimental character, both being of an origin so recent as the year 1831, and the latter of them not being even yet in actual operation.

"It having been shewn that the law of Europe and of the United States, corresponds in general with that of England in permitting the judgment creditor to resort to the person, it will be found that upon this matter, the sentiments of foreign jurists are, for the most part, in consonance with the actual state of their law. Twenty-three opinions (which may be taken in general to express the sense of the legal profession in the countries to which they refer) may be perused in the Appendix; and of these not less than eighteen may fairly be considered as anti-abolitionist in their tendency."

### DOMESTIC REGISTRATION OF DEEDS.

*To the Editor of the Legal Observer.*

Sir,

As the subject of a general registry of deeds has for some time past been the object of consideration among the members of the legal profession, and many plans suggested, but at present none of them adopted—as the benefits which must result from some well regulated and convenient system of registration, are too apparent to need any arguments for their support—and as a very simple plan has suggested itself to my mind, and one to which I can see no possible objection,—I beg to address a few lines to you on the subject.

Let an indorsement be made on every deed relating to real property, of the date, name of parties, and nature of the preceding and subsequent instruments relating to the same property. Thus *A.* purchases an estate of *B.*, and a conveyance is made to him thereof. He afterwards mortgages to *C.* On the original conveyance to *B.*, let an indorsement be made of the conveyance of the property to *A.* On *A.*'s conveyance, let an indorsement be made of the conveyance to *B.* and of the mortgage to *C.*; and on the mortgage to *C.* an indorsement of the conveyance to *A.* Thus every deed would at once shew the preceding and subsequent deed relating to the property, and render it impossible for any deed to be concealed without notice to a purchaser of its existence.

There may be objections to this plan, in the event of an estate being sold in lots, and thus divided into several small estates; but I think any objections on this score (if any can arise) may be very easily obviated, and under any circumstances be provided for.

This plan, if practicable, would at once save

the expense of a general registry office, and the necessary number of clerks attendant thereon, and also the great confusion which must exist in such an establishment.

*Middle Temple.*

S.

[This plan, or to the same effect, has been already suggested, but we think it worthy of repetition, in the concise way stated by our correspondent.—Ed.]

### CHARACTER OF THE OLD REPORTERS.

From the valuable work of Mr. Ram, on "The Science of Legal Judgment," we extract the following characteristic opinions on some of the early Reports.

*Barnardiston.*—When relying on a case in his King's Bench Reports, Lord Kenyon says of them, it is "not a book of much authority in general." In this instance, as his Lordship noticed, this report agreed with Strange's report of the same case. On one occasion, Lord Mansfield absolutely forbade counsel's citing Barnardiston's Reports of Cases in Chancery. He said, it was marvellous to those who knew the reporter, and his manner of taking notes, that he should so often stumble upon what was right; but yet that there was not one case in his book which was so throughout. Sir R. P. Arden, citing a case in the same Reports, admits that "the reputation of the book is not very high;" and, for this reason, his Honor looked into the registrar's book, where, he adds, the case is very nearly as reported. Lord Manners, relying on a case in these reports, observed,—"Although Barnardiston is not considered a very correct reporter, yet some of his cases are very accurately reported." And Lord Eldon, speaking of the same reports, and remarking on Lord Mansfield's opinion of them, has said,—"In that book, however, there are some reports of great value;" "I take the liberty of saying, that in that book there are reports of very great authority."

*Bunbury.*—Lord Mansfield, in trying a cause, saved a particular point, upon certain cases cited out of Bunbury. When the cause came before the Court in bank, and counsel mentioned a case in those reports, Lord Mansfield said, "Mr. Bunbury never meant that those cases should have been published; they are very loose notes." Sir T. Plumer, in postponing his final decision in a cause, to look into a cause cited from Bunbury, observes of these reports, it is a book "certainly of no great authority."

*Carthew.*—Chief Justice Willes having occasion to speak of a case, in reporting which he fancied Carthew was mistaken, made the observation,—"I own that Carthew is in general a very good and a very faithful reporter."

*Coke.*—It is not to be disputed that Blackstone is justified in saying, that "some of the most valuable of the ancient reports are those published by Lord Chief Justice Coke." Of

the same reports, Lord Bacon affirms, that "though they may have errors, and some peremptory and extra-judicial resolutions, more than are warranted, yet they contain infinite good decisions and rulings over of cases." Several judicial opinions on Coke's Report of individual cases show the propriety of receiving with some caution cases reported even by him. He has been charged with inserting his own opinion in the report. Chief Justice Holt, speaking of *Southcote's* case, and dissenting from an opinion there, says,—“My Lord Coke has improved the case in his report of it.” Chief Justice Willes, citing *Gage's* case, which, he says, “is not rightly reported by Lord Coke,” and is otherwise reported in *Moore*, whose report, on searching the record, has been found to be right, goes on to say, referring to the point in that case,—“But I own, if this point were to come as a new question before me, I should be of the same opinion with Lord Coke, who often gives his own instead of the opinion of the Court.” And, to the same effect, Gould, J., noticing a particular doctrine in *Mary's* case, remarks,—“I always thought the doctrine of Lord Coke in *Mary's* case a singular doctrine of his own, and not any part of the judgment of the Court.” On his manner of reporting, Coke himself observes, that it “is summary, relating the effect of all that was said of the one side by itself, and so likewise of the other, beginning ever with the objections, and concluding with the resolution and judgment of the Court”; “which,” he adds, “I hold to be the best order of relation.” The twelfth part of Coke's Reports is of less estimation than the preceding eleven parts. Holroyd, J., naming a case there, and adverting to a point in it, which, as it seemed to him, might be questionable, says,—“The book, in which that case is found, is not so accurate as the rest of the reports of Lord Coke, not having been published by him in his lifetime, but from his notes afterwards.” And Parke, J., expressing an opinion that a part of the same case cannot be law, observes,—“The 12 Rep. is not a book of any great authority”; and he mentions, besides the above opinion of Mr. Justice Holroyd, an opinion of Mr. Hargrave, that the 12 Rep. is “of small authority,” and of Mr. Serjeant Hill, that it is “not fit to be allowed.” It appears, however, that this part of Coke's reports is not always so lightly esteemed, with regard, at least, to some cases in it; as Graham, B., has relied on a case there as authority; and on another occasion Alexander, C. B., delivering the judgment of the Court, waved the easy citation of other cases to support their opinion, and observed,—“I shall merely refer to the high authority of Lord Coke on the point, in the *Earl of Derby's* case, 12 Rep. 114.”

*Dickens*.—Of him Lord Redesdale says,—“Mr. Dickens was a very attentive and diligent register; but his notes, being rather loose, were not considered as of very high authority; he was constantly applied to, to know if he had any thing on such and such subjects in his

notes; but, if he had, the register's books were always referred to.”

*Fitzgibbons*.—Lord Hardwicke, referring to *Arthur v. Bockenham*, in *Fitzgibbons*, continues his observation by saying,—which book “I do not care to rely on, as it is of no authority, though this and some other cases are well reported in it; this particularly very finely, for I have a manuscript note of it.” And Chief Baron Parker mentioning that case, and also *Bunter v. Coke* [*Bunker v. Cooke*,] in the same Reports, adds,—“The cases in this book are very incorrectly reported; but I have been credibly informed that these two arguments are authentic.”

*Hobart*.—Lord Kenyon calls Hobart's Reports, “his excellent volume of reports.”

Mr. Ram states all the reports alphabetically. We have omitted the modern names for the present, and shall perhaps continue our selections.

## SUPERIOR COURTS.

### Equity Exchequer.

#### AGREEMENT.—PAYMENTS.—STATUTE OF FRAUDS.

*Upon a parol agreement for the purchase of lands for 856l., several payments are made, amounting in all to 150l.: Held, that these payments were not such part performance of the agreement as would take it out of the Statute of Frauds and Perjuries.*

*Semble, that a parol agreement is not necessarily waived by the parties to it entering subsequently into a negotiation to obviate an obstacle to its execution.*

*Semble also, that payment by plaintiff of the expense of taking counsel's opinion on an abstract of title, and the execution of some deeds, preparatory to a conveyance of the property, but not proved to be at the plaintiff's expense, are not such part performance of a parol agreement about land as will take it out of the statute.*

The bill was for specific performance of a parol agreement respecting the purchase of land; and the principal question raised for the opinion of the Court was, whether some payments, made on the footing of the agreement, were to be considered as such part performance of it as took the case out of the Statute of Frauds and Perjuries, and entitled the plaintiff to call for a specific performance.

The fullness and clearness of the following judgment—which goes further than any preceding decision to establish a principle and rule applicable to this long unsettled question—does not require, it is conceived, a particular statement of the case, or of the arguments of counsel, to make the points decided easily understood.

Lord Lyndhurst, Chief Baron.—The first point made in this case in the argument on behalf of the defendant was, that the agreement



between the parties was waived by a subsequent negotiation. During the argument, however, I expressed my opinion on that point, that there was a difficulty in carrying the contract into effect in the original form, the plaintiff not being able to make out a good title to the premises; and in consequence of that a negotiation was carried on, in order to see whether there was any mode by which that difficulty might be obviated, and the agreement brought to a conclusion satisfactory to both parties. There was nothing in that negotiation which amounted to a waiver of the original agreement; and it was positively sworn that the agreement never was waived or abandoned.

The next point for consideration was, whether the case was taken out of the Statute of Frauds by reason of the payments made in respect to the title and conveyances. An abstract of the title was delivered, and certain conveyances executed, for the purpose of suffering a recovery; but it did not appear at whose expense these proceedings took place. There was no evidence to show that it was at the expense of the plaintiff; therefore this could not be considered as such a part performance of the agreement as would take it out of the Statute of Frauds. The only expense that the plaintiff was put to, was taking the opinion of counsel on the abstract; and I am clearly of opinion now, as I was at the hearing, that this circumstance could not, upon any principle, be considered as a part performance of the contract, or as taking the case out of the Statute.<sup>a</sup>

The question, therefore, is now resolved into this last and material point;—whether the payments made on the footing of the contract are to be considered as such part performance as entitled the plaintiff to enforce the contract, notwithstanding the defendant relied for defence on the Statute of Frauds. It was said in the first instance, on the part of the plaintiff, that these payments were many in number; that the whole purchase money under the contract amounted to 856*l.*, and that there had been a payment of 150*l.* The evidence shewed, by the terms of the receipts, that, on the footing of the contract, repeated payments were made, and not one entire payment was insisted on, as strengthening the case on the part of the plaintiff. I do not think this varied the case. I think, therefore, that the multitude of payments did not strengthen the case. As to the amount, it was laid down, and not controverted, that a small and inconsiderable payment, made upon the footing of contract, did not take the case out of the Statute of Frauds. The cases of *Seagood v. Meale*<sup>b</sup>, and *Main v. Melbourn*<sup>c</sup>, established that principle. The question then is.—Did a considerable payment, or what Lord Roslyn in the latter case called a *substantial* payment, operate to take the case out of the Statute of Frauds? It is extremely difficult to come to the conclusion, that if small payments, made upon the footing of a contract, did not take

the case out of the Statute, larger payments would have that effect. There was a still further difficulty of this description: namely, How are we to ascertain what was a considerable or substantial payment, and what was an inconsiderable payment? But in cases of this description we must refer to authorities, and balance them on one side and the other. There was a considerable number of authorities cited both ways. I will not mention every case, but merely those which struck me as material to the consideration of the question. The first case was one which came before Lord Hardwicke—*Lacon v. Mertins*<sup>d</sup>,—in which Lord Hardwicke said, “that in courts of equity they must always consider payment of money as part performance, and as taking the case out of the Statute of Frauds.” It was not necessary for that learned Judge to give this opinion in that case, as he decided it on another ground. It was a mere *obiter dictum*, but the *dictum* of a very learned Judge, of great experience and knowledge of equity. The next case was that of *Dickinson v. Adams*, which came on upon a plea; the sum under the contract was 150*l.*; the sum paid in respect of the contract was 16*l.* The defendant raised a question on the Statute of Frauds, and the plea was overruled, without hearing counsel on the part of the plaintiff. It appears, therefore, that the point was not much considered in that case, the learned Judge considering it so clear that it was unnecessary to hear counsel. I do not find this case in print, but it is to be found in Cox’s Manuscript, in Lincoln’s Inn Library: it is so stated in *Main v. Melbourn*, in the 4th of Vesey. Sir Edward Sugden had searched the registry, and could find no trace of it; but those Reports are of considerable authority, and the facts are stated in such a way as to render it impossible to suppose that they had not occurred as stated. The case of *Main v. Melbourn* came before Lord Roslyn, in which the purchase money was 100 guineas, and five guineas were paid in part payment; and Lord Roslyn was of opinion that this did not take the case out of the Statute of Frauds, but that a *substantial* payment would answer that purpose. The decision, therefore, was in effect, that payment in respect of purchase-money did not take the case out of the Statute of Frauds. What he stated about a *substantial* payment was not necessary, and could only be considered as a *dictum* of the learned Judge. This was the sum, or nearly the sum, of the authorities on one side—of modern authorities—for it was not necessary to go back to decisions before the statute, though undoubtedly bearing on the question. On the other side there was the case of *Leak v. Morrice*<sup>e</sup>, where the sum agreed to be paid was 200*l.* in the first instance. 1*l.* was paid, and 19*l.* afterwards, making together 20*l.* It was clear that the Judge’s opinion was, that the payment of 20*l.* was not such a part performance as to take the case out of the Statute of Frauds, although the question was decided upon a different point.

<sup>a</sup> See *Child v. Comber*, 3 Swans. 427.

<sup>b</sup> Prec. Ch. 560. <sup>c</sup> 4 Ves. 720.

<sup>d</sup> 3 Atk.

<sup>e</sup> 2 Chau. Ca. 135.

The next case was that of *Lord Fingull v. Ross*,<sup>f</sup> which was a case much more in point. There the sum was 150*l.*, and the sum paid 100*l.*; and Lord Keeper North decided that payment of the sum of 100*l.* did not take the case out of the Statute of Frauds. We then come to the modern case of *Coles v. Trecothick*,<sup>g</sup> where the purchase money was 20,000*l.*, and the sum paid 2000*l.*; but as Lord Eldon had avoided giving an express opinion on this point, it is not necessary to advert further to it. Then came the case of *Clinan v. Cooke*,<sup>h</sup> which was decided before Lord Redesdale, than whom no Judge was better acquainted with the principles upon which such cases should be decided. It did not appear what was the precise amount of the purchase money, but the amount paid was 50 guineas; and the main point for consideration was, whether this payment took the case out of the Statute. That Judge was of opinion that it did not. So that on the one side we have the express decision of Lord Hardwicke, in *Dickinson v. Adams*, the dictum of Lord Roelyn in *Main v. Melbourne*, and the dictum in *Lacon v. Mertins*. On the other side there was the decision, or what I might say amounted to decision, in *Leak v. Morrice*, and the express decision of Lord Keeper North in *Lord Fingull v. Ross*; and, lastly, the more recent decision of Lord Redesdale in *Clinan v. Cooke*. There was the weight of authority against the plaintiff; and when I see this weight of authority and express decisions against the plaintiff, I am inclined to think that reason is also against him. One ground assigned by Lord Redesdale and Lord Keeper North arose from the Statute itself. It was said in the argument, that in the case of a contract for goods, the contract must be in writing to bind the party, unless the money, or part of the money, was paid. There is an express provision that the payment of money should take the case out of the operation of the Statute, with respect to goods; but there was no such provision as to contracts with respect to land;<sup>i</sup> and the omission, therefore, of that provision, was a strong argument to shew that Courts of Equity did not allow the omission in the Statute to operate so as to take the case out of the Statute. This argument was used, and the principles clearly laid down, by Lords Redesdale and North. But then it was urged by counsel, that this argument proved too much, and therefore it was of no value, because it was said that, with respect to goods, the delivery of part of the goods took the case out of the Statute; and by analogy, if applied to contracts respecting land, the taking possession ought not to take the case out of the Statute, as there was no provision for that; and that argument struck me as of considerable force: but it appears to admit of this answer:—it would be destructive of the principle

of Courts of Equity, if taking possession were not allowed to take the case out of the Statute, for the party would be in such a situation that, if he were not allowed to avail himself of evidence of parol agreement, he might be convicted of fraud, or an action of trespass might be brought against him, and he might be made accountable, during his occupation, for all rents and profits; so that if he were not allowed to defend himself by evidence of parol agreement, he might be made the victim of frauds. To guard against this, and with this view, Courts of Equity considered that the fact of possession in such parties took the case out of the Statute.

It having been admitted on all hands that small payments, made in respect of purchase-money of land, did not take the case out of the Statute; and it being extremely difficult to draw a distinction between small payments, made expressly in respect of the purchase-money, and substantial payments,—also the weight of decisions being in favor of the defendant, and the words of the Statute, and the explanation which I have given to them in answer to the plaintiff's counsel;—all these considerations compel me to decide in favor of the defendant; and I am therefore of opinion that the bill should be dismissed,—but, considering the conflict of decisions on the point, it must be without costs.

*Watt v. Evans, Same v. Price*, Sittings at Gray's Inn Hall, after Trinity Term, 1834.

### King's Bench.

[Before the four Judges.]

MURDER.—EXECUTION.—KING'S BENCH JURISDICTION.—SHERIFF.

*Where there is a doubt as to what sheriff should do execution on a criminal convicted of murder, the Court of King's Bench may order it to be done by the hands of the marshal.*

*Where conviction has taken place, the Court can take no notice of a pardon by proclamation.*

The Attorney General moved for two writs, one of *certiorari* and another of *habeas corpus*, to bring up into this Court the convictions and bodies of two persons named James Garside and Joseph Moseley, who had been convicted at the last Chester assizes, before Mr. Baron Parke, of the murder of Mr. Ashton, a magistrate. They were tried upon the 6th of August, which was on a Wednesday, and in the regular course of things ought to have been executed on the Friday following. A dispute, however, arose as to whether the sentence that had been passed upon them should be carried into execution by the sheriff of the county of Chester, on whom, as of common right, the obligation lay, or by the sheriff of the city of Chester, on whom the obligation lay by immemorial usage, preserved by act of parliament. Until the 11 G. 4, c. 70, all criminals in the county palatine of Chester were tried, not before Judges ap-

<sup>f</sup> 2 Eq. Ab. 46, by the name of *Lord Pengall Ross*.

<sup>g</sup> 9 Ves. 234.

<sup>h</sup> 1 Sch. & Lef. 40.

<sup>i</sup> See ss. 3 and 17.

pointed by a commission of oyer and terminer, but before the Chief Justice of Chester, sitting in banco, and that the Court made a rule for the execution of the prisoner, and the sheriff of the city carried into effect all the sentences of execution which the Court pronounced. By the 11 G. 4, c. 70, the jurisdiction of that Court was abolished, and it was enacted that thereafter there should be in Chester, as in any other county, assizes held with commissioners of oyer and terminer and general gaol delivery; and by the 15th section of that act it was provided, that "nothing in this act contained shall be construed to abolish or affect the obligations and duties, or the jurisdiction or rights now lawfully imposed upon, performed, or claimed and exercised by the mayor and citizens of Chester, in the Courts of the county of the city of Chester, or otherwise." The sheriff of the county refused, on the ground that this clause threw the task of carrying into effect the execution upon the sheriff of the city. The sheriff of the city answered that there was no obligation on him to execute the sentences of the court of oyer and terminer, but only of the county palatine, which had been abolished by the act; and, secondly, that such an obligation never had lain on the mayor and citizens of Chester; and that the clause only continued those obligations which had formerly lain upon them. So that both the sheriffs refused to execute the sentence of the Court. For that reason the learned Baron granted a respite to these prisoners, and they had since been respited from time to time by the Secretary of State—the last time to the 18th of this month. Under these circumstances the question was, how the sentence of the law was to be carried into execution; for the greatest inconvenience would arise if such a sentence should be allowed to remain unexecuted. A bill of indictment for his refusal had been preferred against the county sheriff at the county quarter sessions, but had been thrown out by the Grand Jury. A similar bill of indictment had been preferred against the city sheriff at the city sessions, but had, in like manner, been thrown out by the Grand Jury. He had, by the right which belonged by the constitution to his office, filed an *ex officio* information, in order to put the matter finally at rest; but, in the mean time, much delay had arisen from the agitation of the question. It had been suggested that he should apply for a *mandamus*; but that course would not be sufficient to settle the question, as there might be disputed facts, in consequence of which the matter could not be decided without a trial. Under these circumstances, he applied for the writ of *certiorari* and *habeas corpus*, and now called on their Lordships to use the high functions with which the law entrusted them, not to see the law evaded. Their Lordships had clearly the power to see execution awarded in such a manner. On the authority of their Lordships, without, by the exercise of that authority, deciding the question, or prejudicing it in any manner, they might order execution to be performed, either by the sheriff of the

county or of the city of Chester, or by the sheriff of Middlesex, or by the marshal of the Court. He had looked into the authorities to which he should now refer the Court. The first was *Thomas Middleton's case*, Popham's Reports, 131. "Thomas Middleton was condemned for a robbery at the assizes at Oxford, after which he made an escape; and being taken again, he was brought to the bar, and upon his own confession that he was the party who did the robbery, and that he was condemned for it, the Court awarded execution; and *Montague, C. J.*, said that it was no new case, for it had been in experience in the time of Edw. 3, and 9 Hen. 4, and 5 Edw. 4; and because the sheriff of Middlesex did not give his attendance upon the Court in this case, the Court fined him 10*l.*" The next was *Sir W. Raleigh's case*—a case well-known in history. That case occurred in the 16th James 1, and was thus reported in Croke's (James) Reports, 495: "Sir W. Raleigh was attainted of treason in the 1st Jac. 1, before commissioners at Winchester, and had been a prisoner in the Tower, until, about three years last past, that he was permitted to go at large, and had a commission for a voyage to Guiana, and after his return was remanded to the Tower. The record of the attainder, being brought and certified into the Court of King's Bench, was by *habeas corpus* directed to the lieutenant of the Tower, brought to the bar, and execution was ordered, and the sheriff of Middlesex had a writ given in the Hall to receive him and to do execution; which was done the day after Simon and Jude in the great court betwixt the Hall and St. Peter's church." The next was *Cove's case*, reported as *R. C.'s case*, in Cro. Car. 176, where it was said that "R. C. was brought to the bar, being removed from St. Alban's by *habeas corpus* and *certiorari*, where he was a prisoner and attainted for felony (viz. for horse-stealing); he was committed to the marshal, who was commanded to do execution, and the next day he was hanged." Another case was to be found in 1 Siderfin's Reports, 72. That was the case of *The King v. Corbet, Okey, and Barkstead*. "These three prisoners were brought to the bar from the Tower by *habeas corpus*; when the act of parliament attainting them of treason, certified into Chancery, being brought hither, was read to them. They pleaded that they were not the same persons; but issue being joined thereon, and found for the Crown, the prisoners afterwards confessed, were sentenced and hanged, an objection that there was no record of their conviction in this Court being disallowed." Another case was that of *The King v. William Dale*, in the 3d James 2, reported in 2 Shower, 511: "The defendant, being a soldier, was convicted and attainted at the Reading assizes of felony in leaving the King's service. He was brought up by *habeas corpus* hither, and the record removed by *certiorari*. Mr. Attorney moved to have a rule for the execution of him at Plymouth." This was probably deemed necessary for some state reasons at the time, "which Lord Herbert doubted, and thereupon

spoke some passionate words to Burton. And note, the next day he was removed to the Common Pleas, and *Wright, C. J.*, removed hither. A rule was made by *Wright, C. J.*, and *Holloway and Powell, JJ.*, for the soldier's execution at Plymouth: and for so doing," added the reporter, "were cited these precedents, as I had them from Sir Samuel Astrey," who was then Master of the Crown-office: "In 34 Hen. 8, George Potter and others were convicted and attainted of robbery in the Court of King's Bench, and by a writ of execution the marshal was commanded to deliver their bodies to the sheriff of Kent, who was ordered to hang them in chains on Shuter's-hill. In the 43d year of Elizabeth, the Earls of Essex, Southampton, and Rutland, tried before the Lord *Buckhurst*, Lord High Steward, on an indictment in London, had judgment to be executed at Tyburn, in Middlesex." Sir *W. Raleigh's* and *Coxe's* cases were then referred to. "In the 7th of Charles 1, Lord Audley, tried and convicted in Wiltshire, had judgment to be executed at Tyburn. In the 25th Charles 2, John Brown, convicted of forcibly marrying an heiress, was attainted in Middlesex, and executed in Surrey." The principle acted upon in the cases thus referred to was recognised by Sir Matthew Hale, who, in the 2d volume of his *Pleas of the Crown*, p. 4, says, "If a person attainted in the country be removed by *habeas corpus*, and the record be removed also by *certiorari*, this Court may award execution;" and in p. 5, he says, "Where judgment of death is given in the King's Bench, the execution is to be made by the marshal of the Court; for the prisoner is supposed to be in *custodia marescalli*, and the entry is always so." These were, it was true, cases that had happened before the Revolution; and the last case from Shower especially was one that did not happen in the best of times, the Chief Justice of this Court being removed for the opinion he then expressed, and the Chief Justice of the Common Pleas brought hither to supply his place. If there could be any doubt as to the authority of this Court, these cases might not be deemed sufficient; but there was none. He should, however, cite several cases that had occurred within the last century, which clearly showed that in the best of times this authority of the Court had been fully recognised. In *Foster's Crown Law*, p. 40, was a report of *Charles Ratcliffe's* case. "He was concerned in the rebellion of 1715, and in May, 1716, was convicted and attainted of high treason before the special commissioners of oyer and terminer; he made his escape, and got over to France. At the latter end of the year 1745, he was taken on the coast, on board a French ship of war, laden with arms, ammunition, and other warlike stores, bound, as was supposed, for Scotland, where the rebels were at that time in arms. He was brought to the bar of this Court, by virtue of a *habeas corpus*, and the record of his conviction and attainer was removed by *certiorari*. He pleaded that he was not the same person; which plea was found against him, execution was awarded,

and he was beheaded on Tower Hill." The next case was that of *Earl Ferrers*, which occurred in April, 1760, and was to be found in *Foster's Crown Law*, p. 138. In answer to a question put by the House of Lords in that case, the Judges said, "A time may be appointed for the execution, either by the High Court of Parliament, before which such Peer shall have been attainted, or by the Court of King's Bench, the Parliament not then sitting, the record of the attainer being properly removed into that Court." In 1 *Strange's Reports*, 553, (Trinity Term, 9 G. 1.), was the case of two prisoners who were convicted at Hereford for a murder committed in Pembroke-shire. A question arose as to whether the trial could be had in the next adjoining English county; it was determined that it could, and "the defendants received sentence of death, and being in custody of the marshal, were executed at the watering-place, by Kent-street, being the usual place of execution for his prisoners." Another case was that of *The King v. Royce*, Easter Term, 7 G. 3, reported in 4 *Burr.* 2073, who was tried at the commission of oyer and terminer for the city of Norwich, brought by *habeas corpus*, and had his case argued upon a special verdict. Judgment was given against him and sentence passed, and he being in custody of the marshal, was ordered to be executed at the usual place, at St. Thomas-a-Watering's, in Surrey. There was another case, of *The King v. Taylor*, in 5 *Burrow*, 2797, where a man who was convicted at the assizes in Surrey was brought up to the Court on a *habeas corpus*, when the question argued was whether his offence amounted to murder or manslaughter. The Court decided that it was manslaughter, and he was ordered to be burnt in the hand, which sentence was executed by the marshal at the back of the Court. Having thus satisfied their Lordships as to the power of the Court, he should now quote two authorities with respect to the power of the Attorney General to have a *habeas corpus* and a *certiorari*. The first of these was to be found, *The King v. Thomas*, in 4 *Maule & Selwyn's Reports*, 442, where a *habeas corpus* and a *certiorari* were granted at the instance of the Attorney General on behalf of a prisoner, to remove the prisoner, and the indictment for murder found against him at the sessions for the city of Rochester. Several similar cases were mentioned in a note to that case and in the case itself. Lord *Ellenborough* there said, that upon the Attorney General's application it was a matter of course with the Court to grant the *certiorari*; and added, "we think the Attorney General is entitled to the *certiorari*, and, as a consequence, to the *habeas corpus*." In 1 *East's Reports*, 303, there was a note, in which it was stated that the Attorney General may, without laying any special ground, have a *certiorari*, if he applies even in the name of a defendant, if the defendant be one of the officers of the Crown, or if, for any other reason, the Crown take up his defence.

*Patteson, J.*—I think that a similar authority is to be found in 2 *Burrow*.

Sir J. Scarlett, *amicus curiæ*, said these writs had been granted by the Court in Lord Kenyon's time, in the case of a sheep-stealer, who had been caught upon an escape-warrant, and was brought into this Court.

Lord Denman.—Take the writs.

Writs granted.

On a subsequent day the prisoners were brought before the Court.

The Attorney General then moved that execution might be awarded against them.

Being asked what they had to say why execution should not be awarded against them,—

Dunn, on behalf of Garside, submitted that he ought not to be executed, on the ground of the King's proclamation, which had promised pardon on condition of giving information by which the offenders might be apprehended and convicted, "to any one of the said offenders except to him whose hand had actually fired the shot." Garside had given such information. He cited *Res v. Rudd*, Cowper's Reports, 331.

The Attorney General contended, that if a pardon had been granted by act of parliament the Judge would have been bound to take notice of it; if it had been granted under the great seal, it must have been pleaded; but a mere promise of pardon could be of no avail, even in bar of the indictment.

Lord Denman.—The case of *Res v. Rudd* does not shew that such a proclamation as that referred to gives any right to the prisoner; but merely shews that the Court will allow such delay as will enable the prisoner to avail himself of it, by applying to the Secretary of State. All the Court therefore can do, is so to delay execution as to enable the prisoner to apply to the Secretary of State.

Execution was afterwards ordered to be carried into effect four days afterwards, by the marshal of the Court, and that the sheriff of Surrey should assist the marshal in executing the sentence.

The prisoners were ultimately executed pursuant to this notice.

*Res v. Garside and another*, M. T. 1834. K. B. F. J.

### King's Bench Practice Court.

#### MANDAMUS.—COURT ROLLS.—LORD OF THE MANOR.

*Unless there is a cause in Court, a rule for a mandamus to a lord of the manor to inspect court rolls is nisi in the first instance.*

This was an application to a lord of a manor and his steward, to allow James Best to inspect the court rolls and take copies thereof, so far as they related to two copyhold tenements. Rule of Court, 1 Reg. Gen. H. T. 2 W. 4, s. 102.

Littledale, J.—You may take the rule *ni si*, for that section in the rule of Hilary term only applies to applications where there is a cause in Court. The present application seems to

be made without any proceeding before the Court.

Rule *ni si* accordingly.—*Ex parte Best*, M. T. 1834. K. B. P. C.

#### BAIL BOND.—INDORSEMENT ON PROCESS.

*The amount of bill and costs in an action on a bail-bond need not be indorsed pursuant to 2 Reg. Gen. H. T. 2 W. 4.*

A rule *ni si* had in this case been obtained, calling upon the plaintiff to shew cause why the process issued by him in this action, should not be set aside, upon the ground of irregularity. The irregularity consisted of an omission in the indorsement on the process, of the amount of debt and costs claimed by the plaintiff, contrary to the terms of 2 Reg. Gen. H. T. 2 W. 4. This it appeared was an action on a bail-bond, and the above omission had certainly occurred. On the part of the plaintiff, however, it was contended that it was an immaterial omission, as the rule referred to did not apply to actions on bail-bonds.

Littledale, J.—I think also that the rule does not apply to the case of an action on a bail-bond. The present rule must therefore be discharged.

Rule discharged, without costs.—*Smart, assignee of the Sheriff of Middlesex, v. Lovick*, M. T. 1834. K. B. P. C.

#### SUMMONS.—DEFENDANT'S RESIDENCE.—ATTORNEY'S RESIDENCE.

*A defendant's supposed residence is sufficient to state in a writ of summons.*

*It is sufficient to describe an attorney of "Gray's Inn, London."*

This was an application for a rule *ni si*, calling upon the plaintiff to shew cause why the writ of summons in this case should not be set aside, on the ground of an irregularity in its description of the defendant's residence. The writ, it appeared, described the defendant as of the county of York, he being resident at Kingston-upon-Hull. This it was urged rendered the writ of summons defective, as Kingston-upon-Hull was a county of itself.

Littledale, J., was of opinion that in common parlance that description was sufficient; but he had no objection to grant a rule *ni si* if the defendant, after the observation he had just made, required one.

It was further objected on the part of the plaintiff, that the indorsement on the writ, of the attorney's place of abode, was irregular, as he was described as of "Gray's Inn, London," but Gray's Inn was not in London.

Littledale, J., granted a rule upon the former ground, but refused it on the latter.

Cause was shewn against this rule, when an affidavit was produced setting forth, that the defendant's residence was within twenty yards of the boundary-line of the county of York, which was in a street in continuation of the one

in which the defendant resided, though having a different name. In this case the words contained in s. 1 of 2 W. 4, c. 39, have been complied with, which direct that "in every such writ and copy thereof, the place and county of the residence, or supposed residence, of the party defendant, or wherein the defendant, shall be, or shall be supposed to be, shall be mentioned."

*Littledale, J.*, thought as the act said "supposed to be," that the description was good.

Rule discharged, with costs.—*French v. Gregson*, M. T. 1834. K. B. P. C.

### Exchequer at Pleas.

#### JUDGMENT BY DEFAULT.—CROSS-EXAMINATION OF WITNESSES.

*On execution of a writ of inquiry, the defendant may cross-examine the witnesses as to whether the work was done on the defendant's retainer.*

Assumpsit for work and labour as a surveyor. The defendant suffered judgment by default. At the trial of the writ of inquiry, witnesses were called to prove the work done. They were cross-examined as to whether part of the work had been done on the request of the defendant. This course being objected to by the plaintiff, the undersheriff allowed the objection, on the ground that the defendant could only dispute the amount of his liability, and not its existence.

*Parke, B.*—A judgment by default admits something to be due, but disputes the amount. The question therefore was proper.

Rule absolute.—*Williams v. Cooper*, M. T. 1834. Excheq.

### ADJOURNMENT OF CHANCERY SITTINGS.

There will be no sittings in the Christmas vacation.

The General Petition day after Christmas, will be Tuesday the 13th of January, 1835.

*Registrar's Office*, Dec. 9, 1834.

### THE NEW LAW APPOINTMENTS.

We understand that nothing has been finally arranged regarding the New Law Appointments, except that Lord Lyndhurst is the Lord Chancellor. The probability appears to be that Sir James Scarlett will be Chief Baron—of which the profession as well as the public will doubtless approve. Mr. Pemberton having returned his briefs, previously to leaving London,—in order as it is presumed to prepare for his election,—an additional currency is given to the report that he will be the Solicitor-General.

### NEW RULES UNDER THE FINE AND RECOVERY ACT.

#### REGULÆ GENERALES,

*Trinity Term, 1834.*

IT IS ORDERED, That from and after the last day of this term, where such parts of the affidavit, verifying the certificate of acknowledgment, taken in pursuance of the late act of parliament, respecting fines and recoveries, as state "the deponent's knowledge of the party making the acknowledgment, and her being of full age;" cannot be deposed to by a commissioner, or by an attorney or solicitor, the same may be deposed to by some other person, whom the person before whom the affidavit shall be made, shall consider competent so to do.

AND IT IS FURTHER ORDERED, That where more than one married woman shall at the same time acknowledge the same deed, respecting the same property, the fees directed by the said rules to be taken, shall be taken for the first acknowledgment only.

And the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one-half of the original fees, and so also, where the same married woman shall at the same time acknowledge more than one deed respecting the same property.

And where, in either of the above cases, there shall be more than one acknowledgment, all such acknowledgments may be included in one certificate and affidavit.

In every case the acknowledgment of a lease and release shall be considered and paid for as one acknowledgment only.

N. C. TINDAL.

J. A. PARK.

J. GASELER.

J. B. BOSANQUET.

### BARRISTERS CALLED.

MICHAELMAS TERM, 1834.

#### INNER TEMPLE.

Henry Tyrwhitt, Esq.  
Thomas Braithwaite, Esq.  
William Frederick White, Esq.  
Charles Rivers Freeling, Esq.  
Hugh Seymour Tremenheere, Esq.  
John Edwards Snowden Leigh, Esq.  
Edward D'Oyly Barwell, Esq.  
Thomas Erskine Perry, Esq.  
John Handley, Esq.

#### MIDDLE TEMPLE

Fairfax Fearnley, Esq.  
John Mac Gachen, Esq.

Phillip Hookins, Esq.  
 Christie Innes Falconer, Esq.  
 Henry Bertram Gunning, Esq.  
 Richard Hutton, Esq.  
 John Berry Walford, Esq.  
 John Stuart Roupell, Esq.  
 Thomas Entwisle, Esq.

## LINCOLN'S INN.

Edward Dowling, Esq.  
 William Astley, Esq.  
 Ralph William Spearman, Esq.  
 James John Ormsby, Esq.  
 Frederic Liardet, Esq.  
 Robert Holland, Esq.  
 Edward Yardley, Esq.  
 John Hockley Taylor, Esq.

Edward Chaddock Gorst	-	Preston.
Richard Palmer	-	
John Forrest	-	
Thomas Howard	-	
William Ormerod Pilkington	-	
William Rawstorne	-	Rochdale.
William Shawe	-	
Robert William Hopkins	-	
Richard Shuttleworth	-	Ulverston.
William Heaton	-	
John Lee	-	
James Greaves Barton	-	
Henry Rennington	-	
Robert Francis Yarker	-	Warrington.
Samuel Tyson	-	
Peter Nicholson	-	
John Ashton	-	Wigan.
John Fitchett	-	
Edward Woodcock	-	
Edward Scott	-	
Henry Gaskell	-	

## FURTHER LIST OF COUNTRY PERPETUAL COMMISSIONERS,

Under 3 &amp; 4 W. 4, c. 74.

## LANCASHIRE.

Thomas Carr	-	Blackburn.
Thomas Ainsworth	-	
John Hargreaves	-	
James Neville	-	
John Richard Whitaker	-	
Henry Hargreaves	-	Bolton le Moors.
James Kyrie Watkins	-	
Adam Lomas Haworth	-	
James Cross	-	
John Woodhouse	-	
Robert Artindale	-	Burnley.
Anthony Buck	-	
Samuel Woodcock	-	Bury.
William Hutchinson Norris	-	
William Hartley	-	Clitheroe.
Harry Bolton	-	
James Robertshaw	-	Colne.
William Sharp	-	
Thomas Thompson	-	Lancaster.
John Taylor Wilson	-	
Richard Willis	-	
Thomas Avison	-	Liverpool.
Richard Brooke	-	
John Eden	-	
Thomas Foster	-	
William Tristram Keightley	-	
Joshua Lace	-	Manchester.
William Spurstow Miller	-	
Richard Radcliffe	-	
Thomas Shackleton	-	
James Otley Watson	-	
Jas. Blackledge Brackenbury	-	Oldham.
Robert Ellis Cunliffe	-	
William Slater	-	
Oswald Milne	-	
George Humphreys	-	
Samuel Edge	-	
George Hadfield	-	
Samuel Kay	-	
Aldcroft Phillips	-	
William Barlow	-	
Kay Clegg	-	

## ANSWERS TO QUERIES.

## Common Law.

MEDICAL CHARGES. VOL. 8, P. 399; P. 32, ante.

Although the statute of 3 Hen. 8, c. 11, s. 1. only inflicts a penalty on a party practising as a surgeon without being licensed, and Lord *Ellenborough* decided in *Grenare v. Le Clerc Bois Valon*, 2 Campb. 144, that an unlicensed surgeon might sue for his fees, subject to the penalty; yet even in that case the rule for a new trial was discharged on a different point, and the law has since been distinctly laid down, as C. J. *Holt* held in an old case, that "every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself doth not mention that it shall be so, but only inflicts a penalty on the defaulter: because a penalty implies a prohibition, though there are no prohibitory words in the statute." *Bartlett v. Vinor*, Carth. 252, cited by *Tindal*, C. J., with approbation, in *De Begnis v. Armistead*, 10 Bing. 107. And *Bayley, J.*, in *Bensley v. Bignold*, 5 B. & Ald. 335, said, "it makes no difference whether a thing be prohibited absolutely or only under a penalty." See also *Chitty on Contracts*, 2d ed., p. 234, 235, 540, and the cases there cited, dissenting from Lord *Ellenborough's* decision in 2 Camp.

AMICUS CURIAE.

ASSIGNMENT OF BAIL BOND. VOL. 8, P. 464.

Before the stat. 4 & 5 Ann. c. 16, it was necessary to give the sheriff a rule to bring in the body before an assignment of the bail-bond could have been taken. In order to remedy this inconvenience, the above statute was passed, the 20th sec. of which enacts, "that if any person shall be arrested, the sheriff, at

the request and costs of plaintiff, shall assign to plaintiff the bail-bond, by indorsing," &c.—It will be seen that by that act no period is mentioned at which an assignment may be taken, because it was doubtless considered by its framers that no injury could arise to the sheriff from an assignment being *taken at any time*: indeed it is for the sheriff's interest to assign it as soon as possible, for by that he wholly exonerates himself from any liability. I beg to refer to a case reported in Barnes, p. 77.

H. G. S.

for the sheriff should in strictness return the writ *immediately* after execution; if he do not, the plaintiff can compel him to do so by ruling him immediately after the arrest has taken place. In term-time the rule is granted of course on production of a precipe. In vacation, an affidavit must be made, by any person who can swear that defendant has been arrested; and upon this affidavit the Judge's clerk will draw up an order for the sheriff to return the writ.

J. D.

INFANT.—ARREST. P. 32.

1. An infant should not be holden to bail for any debt or other matter, where the plea of infancy would be a *legal bar* to the action. If holden to bail, however, the Court, it should seem, would *not* discharge him on entering a common appearance, but would put him to plead his infancy. *Mudor v. Eden*, 1 B. and P. 430; see also Chitty's Archbold, vol. 2, 675. In the case put by *E. S. H.*, the debt is for necessities; therefore the plea of infancy would not be a legal bar to the action, and he would be, in my opinion, quite safe in arresting him.

J. W.

2. The Court will not discharge a defendant out of custody on filing common bail, on the ground of infancy. 1 Bos. and Pull. 480; and Tidd, 8th edit. p. 214.

3. It is presumed, from *Hallett v. Aubrey*, in the Exchequer, H. T. 1833, that an infant may be arrested. In that case a rule had been obtained to stay proceedings on the bail-bond, and afterwards discharged, from the insufficiency of the affidavit in support of it.

X. Y.

Practice.

RULE TO RETURN WRIT. VOL. 8, P. 464.

1. The rule to return writ might have been taken out on the return day of the writ under the old practice. See Tidd, p. 329. And though, under the new process, there is no return-day mentioned in the writ, yet the day of the execution is considered as such, and the Judges' clerks will give an order to return the writ on the day of arrest. It may be as well to observe in this place, that on a town arrest a plaintiff will be enabled to attach the sheriff, if bail be not put in within the eight days allowed by the act. The rules to return writ and to bring in the body, being both four day rules, and the former being obtained on the day of arrest, the latter on the day on which the writ is returned, though Tidd, p. 333 (7th edit.) says, that a rule to bring in the body cannot in general be had till the time for putting in bail has expired; but it has been decided that a plaintiff may have a rule to bring in the body on the day of the return of *cepi corpus*. See 4 M. & S. 427.

H. G. S.

2. The plaintiff need not wait four days before he calls on the sheriff to return the writ;

Ratio of Landlord and Tenant.

ARREARS OF RENT. VOL. 8, P. 480.

If more than fifty years have elapsed from the last receipt of rent in the case put by *H.*, then no rent can be recovered; 32 H. 8, c. 2, s. 4. If this be not the case, yet by the 2d sec. of the 3 and 4 W. 4, c. 27, he would be barred (that sec. substituting twenty years in the place of fifty years), were it not for the 15th sec., by which it is enacted, "that when no such acknowledgment as in s. 14 is specified, shall have been given before the passing of this act, and the possession of the land or receipt of rent shall not have been adverse, then, notwithstanding the period of twenty years *thereinbefore limited* shall have expired, a distress may be made or an action brought within five years after the passing of this act." From this sec. it is clear that an action may be brought, or a distress made, in the case put by *H.*, until five years shall have elapsed from the passing of that act. But then the question arises—how many years' rent can be recovered? The answer to this will appear from the 42d sec. of the above act, which enacts, "that no arrears of rent, or any damages in respect of any such arrears of rent, shall be recovered by any distress, action, or suit, *but within six years* after the same shall have become due," &c. This sec. is somewhat obscure, but I take it to mean that no more than six years' rent and damages, &c. shall be recovered, though (for example) nineteen years were due. I have not mentioned the 3 and 4 W. 4, c. 42, in consequence of the proviso, "that nothing therein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specifically limited;" which is the case with sec. 2, 3, and 4 W. 4, c. 27, which expressly states, "that no person shall make a distress, or bring an action to recover any rent, but within twenty years after the right accrued to him," &c.

M. J. M.

ADVERSE POSSESSION. P. 63.

It is quite impossible to answer the query of C. E. unless the facts are set forth; for he does not state whether any acknowledgment has been made by the tenant to the landlord of the latter's title to the property within the time prescribed,—nor whether he held under a lease in writing,—nor whether possession was



adverse at the time the act 8 & 4 W. 4, c. 27, was passed. If C. E. will carefully consider the 8th, 9th, 14th and 15th sections of the Statute of Limitations, he will obtain all the information he requires.

S. W.

NOTICE TO QUIT. P. 16.

"A Constant Reader" will find, on reference to 1 Esp. 197, that "where a notice is given to quit at Ladyday or Michaelmas-day generally, it shall *primâ facie* be held to mean New Lady-day or New Michaelmas-day; but it is open to explanation that Old Michaelmas-day or Old Lady-day was intended.

SPES.

**Law of Property and Conveyancing.**

SETTLEMENT. VOL. 8, P. 495; *ante*, p. 16.

1. There can be no doubt whatever upon this point, that if the recovery were *properly* suffered, the purchaser from the eldest son, and not the second son, would be entitled, although the eldest son died in the lifetime of his parents. It is so clear that no cases can be wanted to prove it: the thing is of every day occurrence.

M. T.

2. In answer to X. Y. Z., I beg to state that the son, who had attained 21. could not, under the old law, bar the entail; but under the Fines and Recoveries Act (3 & 4 Wm. 4, c. 74) he can. J. W., in answer to the query to which the above is an answer, says, "I think the second son is entitled in tail; for previously to the 3 & 4 W. 4, c. 74, a vested remainder in tail could only be recovered by *fine*." Vol. 9, p. 16. Now a fine would not have barred the estate tail in the above case; for a fine will only bar the issue in tail, and not those in remainder.

SPES.

COPYHOLD. P. 48.

Permit me to inform J. W. that the point alluded to received the judicial decision of the late Master of the Rolls, in December, 1832 I subjoin the judgment, from the short-hand writer's notes.

"The uncle purchased a copyhold—it was surrendered to the use of his niece for life, in trust for him, with remainder to him in fee. He makes his will, and devises this copyhold; his devise is a devise of a legal estate for life, and the admission of the tenant for life is the admission of him in remainder; consequently the uncle's devise passed a legal copyhold. The devisee (his nephew) never was admitted to this legal estate—he had only therefore an inchoate title, to be perfected by admittance. He never was admitted, and he devised this copyhold without being admitted. His devise, therefore, being of a legal estate, is void."

X. Y.

MORTGAGE.—AUCTION DUTY. VOL. 8, P. 112.

The Stamp Act requires the true consideration to be stated. In this case it was 15,500*l.*, upon which I think duty must be paid—the arrangement relative to the mortgage debt not affecting the consideration, nor was it binding on the mortgagee; and if he should assent to it on payment of the 10,500*l.*, the estate would be released by an indenture with the common deed stamp.

X. Y.

MORTGAGEE. VOL. 8, P. 495.

A mortgagee *taking possession* is bound to exercise the diligence of a provident owner: but if the tenant for life was not compellable to repair, the mortgagee was exempted. In *Wood v. Gynnon*, Amb. 395, it was held, that the Court of Chancery would not direct a tenant for life to repair.

X. Y.

DEVISE.—LIFE NOT IN BEING. P. 79.

Permit me to refer "Spes" to *Cadell v. Palmer*, 10 Bing. 424; or *Stewart's Appendix* to Bythewood, 81, 82, where he will find *Beard v. Wrenn* has been confirmed in the Lords, on the "knotty point" involved in that case, the law respecting which is very intelligibly stated.

X. Y.

QUERIES.

**Law of Landlord and Tenant.**

ARREARS OF RENT.

By the 3 & 4 W. 4, c. 27, § 2, (which received the royal assent the 24th July, 1833,) it is enacted, "That after the 31st of December, 1833, no person shall make an entry or distress or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same."

By the 3d section it is enacted, that in the construction of that act the right to make an entry or distress or bring an action to recover any land or rent, when the person claiming such land or rent, or some person through whom he claims, shall in respect of the estate or interest claimed have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so re-

reised; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

By the 42d section of the above act it is further enacted, that after the 31st of December, 1833, "no arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or any damages in respect of such arrears of rent, or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent."

By the 3 & 4 W. 4, c. 42, § 3, (the act for the further amendment of the law, which received the royal assent the 14th of Aug. 1833,) it is enacted, "That all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, &c. that shall be sued or brought at any time after the end of that session of parliament, shall be commenced and sued within the time and limitation thereafter expressed and not after; that is, the said actions of debt for rent upon an indenture of demise, &c. within ten years after the end of that session, or within twenty years after the cause of such actions or suits and not after: provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited."

*A.*, by indenture, lets certain premises to *B.* for a term of years at an annual rent. The indenture contains the usual clause of forfeiture in case of nonpayment of rent. No rent has been paid for sixteen years. Is not *A.* entitled to enter for the forfeiture? and can he recover under the above statutes, by distress or action, the whole of such arrears, or only six years of such arrears? Would there be any difference if *B.* held under a verbal agreement?

C. H.

#### REMOVING FIXTURES.

*A.* erected a building adjoining to his house, which he rented for a certain term. Can he remove this erection? His term has not yet expired by several years.

INQUIRER.

#### DISTRESS.—SUNDAY.

A worthless tenant, to prevent a distress for rent, puts his cattle into the land after sunset in the evening, and withdraws it before sunrise in the morning, but keeps it there the whole of Sunday. Cannot the landlord legally distress the cattle on Sunday, or what authority (statute or decision) exists to the contrary?

And may he not distress after sunset or before sunrise, so as the daylight be sufficient to distinguish the identity of persons and the cattle, or to count money, if the tenant were to tender the rent due?

J. A. M.

#### Law of Property and Copyholding.

##### COPYHOLDS.—DEBTS.

Can copyhold or customary lands be extended for a debt incurred since passing the 3 & 4 W. 4, c. 104, or are they only liable, as assets, to pay the debts of a deceased person?

INQUIRER.

##### BEQUEST.—FIXTURES.

In 1812, *A. B.* purchased a piece of land, and devised it to his wife for life, and after her decease to trustees for sale. The testator gave all his personal estate absolutely to his wife. After the date of his will, *A. B.* erected a substantial house on the land, and furnished it. On his death, his widow resided on the property, and died a short time ago, leaving a will. The question is, whether the fire grates (which were put in by *A. B.*) are considered as fixtures to the house, and pass with it, under the devise to the trustees for sale? or whether they belong to the executors of the widow, as late part of the personal property of *A. B.*?

V. F.

#### Common Law.

##### JURISDICTION OF MAGISTRATES.—WAGES.

Can justices of the peace of one county compel, by warrant or summons, a person residing in another county (perhaps 200 miles distant or more), to appear before them to answer any complaint which they are empowered to hear and determine in a summary way? The case giving occasion to this inquiry, is that of a master, residing in Cornwall, having a farm in Somersetshire, whereon he keeps a hind, who has obtained from a justice of the latter county a summons on the master to appear at petty sessions within the same, on a groundless complaint for wages.

J. A. M.

##### ANNULING POWER OF ATTORNEY.

If *A.* give *B.* a power of attorney to receive his (*A.*'s) salary, and any other sums to which he might thereafter become entitled, by will or otherwise, till *B.*'s claim was satisfied, could *A.* annul that power without the consent of *B.*? or could *A.* legally receive any money himself?

X. Y. Z.

##### LIABILITY OF RETIRING PARTNER.

*B.*, retiring from partnership with *A.*, is secured, by deed, an annuity of 1000*l.*, payable out of the business, but subject to be reduced to one half of *A.*'s actual profits, when, in any year, such profits shall not amount to 2000*l.* Does this arrangement continue *B.* a partner in the concern?

W. B.

## POUND KEEPER'S FEES.

By 1 and 2 P. and M. cap. 12, no pound keeper shall charge more than 4d. for fees of impounding cattle, &c.: now *A. B.* had 30 heifers and 80 sheep that broke through the fence of his field into a private lane in an adjoining county, and the hayward pounded them, and his fees, by the lord of the manor's court leet, were 1s. per head, amounting, in the whole, to 5l. 10s., which the magistrate of the district said must be paid, as the fees were legal, by custom long established, and that a custom was good against a statute. The cattle had done no damage to any one. I shall feel obliged if any of your numerous correspondents can give me any information upon the subject.

P.

## ASSIGNMENT OF REPLEVIN-BOND.

What course must be taken by a defendant in replevin, who has obtained a verdict in the superior court, (where it was renewed) of *retorno habendo*?—must he before taking an assignment of the replevin-bond, issue out execution of *retorno habendo*, and wait for the sheriff's return, or can he without issuing such execution, at once take an assignment of the replevin-bond?

B. A. T.

## EJECTMENT.—INSURANCE.

Covenant that *A.*, his executors, administrators, and assigns, shall insure, and in default thereof, the lessor may insure and distrain on the demised premises. Can an ejectment be maintained, as the lessor has the power of always keeping the premises insured, in default of *A.*'s so doing? It is quite clear an ejectment would lie, if the lessor had not the power given to him; but that is not the present case.

X. X.

## AGREEMENTS IN WRITING.

In the sales which have been decided to be an interest in *goods and chattels*, must such goods, &c. be of the value of 10l. and upwards? I presume if they are, the agreement ought to be in writing.

A CONSTANT READER.

## Practice.

## NEW RULES OF PLEADING.

Under the new Rules as to pleading, is it now necessary that a defendant should specially plead his liability to be summoned to the Court of Requests belonging to the place where he resides, to enable him to take advantage of a plaintiff's recovering a less sum than 40s.? or is the privilege of entering a suggestion still open to him, without distinctly traversing the plaintiff's eligibility to commence proceedings in a superior Court?

A CONSTANT READER.

## THE EDITOR'S LETTER BOX.

*The Legal Almanack and Remembrancer*, now nearly ready for publication, will contain Lists of the Judges and Officers of all the Courts at Westminster, and such of the Local Courts as are interesting to the Profession in general.—The Officers of both Houses of Parliament.—A Calendar, adapted peculiarly for the use of Lawyers, giving accurate information of the Holidays kept at the Law Offices; the particular Days for transacting various kinds of Legal business; the commencement and conclusion of the Terms; the holding of Assizes, Sessions, &c.—The hours of attendance at the Common Law, Equity, and other Offices, carefully ascertained.—The Terms and Returns of Writs.—Barristers, with the date of their call, and Regulations of the Inns of Court.—Members of the Incorporated Law Society, with the regulations for admission.—The Circuits.—The Quarter Sessions;—Aldermen and Law Officers of the City.—The Police Magistrates and Commissioners; and various other Tables of professional utility.

Information of all the arrangements in the Courts and Offices, and the appointment of Judges and Officers, will be carried down to the latest time. We must, of course, wait until the appointments are completed of the Lord Chancellor, the Lord Chief Baron, the Attorney and Solicitor General, &c.

The suggestion of rendering the Almanack available as an *Office Diary*, may be effected by having that part of the Almanack interleaved which contains the Calendar, or by adding blank leaves at the end. If considered desirable, we will arrange with the publisher to supply such copies, bound up in this way, as may be required.

We doubt whether a satisfactory List can be made out of all the Barristers who attend the several Sessions throughout the country. We have collected information to a certain extent, and will endeavour to complete it. We shall be glad to receive any names that may be sent, particularly the more recent ones. We find that the published Lists of the Circuits are very inaccurate, including the names of many gentlemen who have long left the Circuits, and omitting many who have joined them.

We are obliged to S. T. B. for suggesting an addition to the Almanack of a list of *Parliamentary Counsel*, and will endeavour to supply it. Some of our Correspondents may perhaps help us to some names not usually known in that branch of Practice.

The Queries and Answers of E. P.; S. D.; J.; Spes., and "Studiosus," have been received.

We are aware that a few of our friends are not interested in the "Queries and Answers" which we insert; but as the articles in that department are supplied by not less than two hundred of our subscribers, we cannot curtail this part of the work, and in the present number have disposed of a considerable part of our arrears.

# The Legal Observer.

Vol. IX. SATURDAY, DECEMBER 20, 1834. No. CCXLIII.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE LATE LEGAL APPOINTMENTS.

We forbore noticing all the rumours on the subject of the recent legal changes; but the appointments are now completed, and it is our duty to record them.

Lord Lyndhurst is Chancellor, having resigned the Chief Baronship. We have already expressed our satisfaction at this appointment. It seems generally acknowledged, that he is better qualified for the numerous duties of his office than any other person. As a good lawyer, an accomplished statesman, and a forcible and dignified speaker, he unites qualifications not easily found together. We have already stated our only fear with respect to him. If he can only keep the Equity business in his present Court as much down as he did in the Court which he has left, he will leave nothing to regret to the profession.

The two other judicial appointments include the names of the two most eminent advocates of the day. No one can say that Sir James Scarlett is not qualified to preside in a Court of Common Law, or that Sir Edward Sugden will not make an able Judge of a Court of Equity. Each has in his several Court long enjoyed as great business as was ever obtained by any lawyer. Each has long been more eagerly sought for than any other advocate. Each has by his own exertions risen to great eminence; and the elevation of both is an instructive lesson to their own profession. As lawyers we cannot but rejoice at it. It is true that it so happens that their politics are now the same, and of a strong shade; but this must not prevent us from expressing our satisfaction. We must not be

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understood as favouring in the slightest degree their political sentiments. It is as lawyers we admire them, and as lawyers we are proud of their success.

The Attorney-General (Mr. F. Pollock), and the Solicitor-General (Mr. Pemberton), are also very able men: but as far as they are concerned, as they are at the bar, we abstain from saying any thing further; as we have always made it a rule to give no opinion on the merits or demerits of any person in actual practice.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

No. XIV.

THE ACT TO AMEND THE ACT FOR SHORTENING THE TIME REQUIRED IN CLAIMS OF MODUS.

4 & 5 W. 4, c. 83.

THE public was indebted to Lord Tenterden for introducing an act for shortening the time required in claims of *modus decimandi*, or exemption from or discharge of tithes, in pursuance of the recommendations of the Real Property Commissioners. This act (2 & 3 W. 4, c. 100), and the grounds of its introduction, we fully stated in our fourth volume, pp. 321—324. By section 3, it was provided that the act should not be available to or for any plaintiff or defendant in any suit or action relative to any of the matters mentioned in the act then commenced, or which might be commenced during the then Session of Parliament, or within one year from the end thereof. The

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consequence of this section was that a great many suits were commenced under the apprehension that the parties instituting them would be precluded by the act from recovering the tithes to which they claimed to be entitled, unless they prosecuted their claims within the periods limited by the act. The object of the present act is to enable the parties to these suits to settle them to the greatest advantage. For this purpose it is enacted (§ 1.), that from and after the passing of this act the defendant or defendants in any action or suit which may have been commenced or instituted since the passing of the said act for the recovery of tithes, or for invalidating claims of a *modus decimandi*, or an exemption from or discharge of tithes, for lands in respect whereof no tithes, nor any composition in lieu thereof, shall have been actually rendered or paid within the space of sixty years previous to the passing of this act, may, with the consent of the plaintiff or plaintiffs in such action or suit, pay the amount of the costs and expenses (to be taxed as between party and party) which may have been incurred by or on the part of the plaintiff or plaintiffs in such action or suit into the Bank of England, in the name and with the privity of the Attorney General of the Court of Chancery or of the Court of Exchequer, or of the proper officer of the Court in which such action or suit shall have been brought, to the credit or on account of such action or suit; and in every case where such costs and expenses shall be so paid into Court, all further proceedings in such action or suit (except as hereinafter provided) shall be stayed and suspended until the end of the next Session of Parliament.

That from and after the end of the next Session of Parliament the plaintiff or plaintiffs in any action or suit, in which the defendant or defendants shall have caused the proceedings to be stayed or suspended under the provision hereinbefore contained, may give notice to the defendant or defendants of his, her, or their intention to proceed in such action or suit and to proceed therewith accordingly; and then and in every such case the defendant or defendants shall, immediately after such notice shall have been so given, be entitled to receive out of Court the sum or sums which such defendant or defendants shall have previously paid into Court on account of the costs of the plaintiff or plaintiffs. (§ 2.)

That the plaintiff or plaintiffs in any action or suit in which the defendant or de-

fendants shall have paid into Court the costs of such plaintiff or plaintiffs under the provision hereinbefore contained, may take the sum or sums which may have been so paid for such costs out of Court, for his, her, or their own use, and then and in every such case all further proceedings in such action or suit shall be for ever abandoned and relinquished. (§ 3.)

That the successors, heirs, executors, administrators, or assigns of any plaintiff or plaintiffs, whose action or suit may be so stayed or suspended as aforesaid, may revive and proceed with such action or suit after the end of the next Session of Parliament, or take such costs as aforesaid out of Court, and cause all further proceedings to be abandoned and relinquished, in the same manner in every respect as the original plaintiff or plaintiffs might or could have done. (§ 4.)

That notwithstanding the provision hereinbefore contained, any party to any action or suit so suspended, upon adducing sufficient proof to the satisfaction of a Judge of the Court in which such action or suit shall have been commenced, that there is danger of some material evidence in support of the right or claim of such party being lost in consequence of such suspension, may proceed in such action or suit to the extent of proving such fact or facts the evidence respecting which shall be so shown as aforesaid to be in danger of being lost through such suspension. (§ 5.)

That nothing in this act contained shall prevent the prosecution of any suit in law or equity for the recovery of any tithes claimed or demanded previous to the passing of the said recited act, or for the recovery of the value thereof. (§ 6.)

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#### DECISIONS ON THE SERVICE OF EQUITY PROCESS ACTS.

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In our fourth volume, pp. 97, 98, we stated the provisions, and considered the effect of the Service of Equity Process Act (2 W. 4, c. 33); and in our last number we gave a full abstract of the act of the last session of parliament, passed to amend and extend that act (4 & 5 W. 4. c. 82). There have been two decisions recently made on these acts, which are of some importance, and of which we now give a note.

Mr. Cooper moved for leave to serve a subpoena on the defendant, who resided in Scotland. The motion was founded on the

2 W. 4, c. 33. There could be no doubt on the jurisdiction of the Court, for it was expressly stated to extend to Great Britain and Wales; but it was proper to state that Lord Brougham, C. had refused a similar application, on the ground that Lord Plunkett, who had introduced the bill, had not intended it to extend to Scotland.

The Lord Chancellor.—That does not signify, if the words of the act say so. Take the order so prayed.—*Cameron v. Cameron*. L. C. Dec. 11, 1834.

Mr. Cooper applied for leave to serve a subpoena on one of the defendants, named M'Intosh, who was residing at Edinburgh, and also for an order directing the British Consul at Naples to serve a similar process on a defendant (Lloyd) resident at Naples. The suit had been instituted by the plaintiff to enforce a claim to a considerable sum of money in the public funds. The application was made under the 4 & 5 W. 4, c. 82. It was quite clear on this latter act, which was passed to amend the 2 W. 4, c. 33, that a subpoena could be served, not only on a person resident in Scotland, but even on his Majesty's subjects who were out of the United Kingdom. But though the act gave the power to the Court, yet it had left it without any officer to execute the service. He now moved, that when he should have produced an affidavit to the Court in compliance with the terms of the act, setting forth the residence of Lloyd at Naples, and whether there were any British officers, civil or military, serving under his Majesty, residing near his residence, and specifying the means by which the service might be authenticated, the Court would direct the subpoena to appear and answer to issue in the manner directed. His Honor had already, in the case of *Macmaster v. Lomas*, given it as his opinion that a subpoena could be issued under the 2 W. 4, c. 33, to a person resident in Scotland; and the present Lord Chancellor (*Lyndhurst*) concurred with him, although the late Lord Chancellor entertained a contrary opinion.

The Vice-Chancellor agreed in opinion with the present Lord Chancellor, but thought that there was a considerable difficulty with regard to a service at Naples. He could not direct it to be made personally by the consul. The act did not specify what person was to make the service; it only required that an affidavit should be produced to the Court, specifying the means by which the service could be effected. The Court had the power to issue subpoenas;

but no officer to execute them. He would, therefore, grant the order hypothetically, on the necessary affidavit being produced to the Court. *Parker v. Lloyd*, V. C. Dec. 13, 1834.

#### LIABILITY OF UNDER-SHERIFFS.— RETURN OF WRITS, &c.

CONSIDERABLE inconvenience has already been found to result from the operation of the 3 & 4 W. 4, c. 42, § 20, upon the existing practice with respect to returns by the sheriff on writs issued to him. It is provided by the above section, "that from and after the 1st day of June, 1833, the sheriff of each county in England and Wales shall severally name a sufficient deputy, who shall be resident or have an office within one mile from the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of rules and orders to be made on or touching the execution of any process or writ to be directed to such sheriff." (*Dowling's Practice*, p. 59.) Now, it will be remembered, that by the present practice the sheriff's rule to make a return to the writ or concerning the mode of its execution, is in town causes a four-day rule, and in country causes a six-day rule. It will also be remembered, that by 1 Reg. Gen. H. T., and 2 W. 4, § 50, it is ordered, that "service of rules and orders and notices, if made before nine at night, shall be deemed good, but not if made after that hour."

In cases, then, where the writ is issued into distant counties, the greatest difficulty, if not impossibility, will exist in making a return to the writ in due time. The rule may be served at eight o'clock, at the under-sheriff's office, within a mile of the Temple, and consequently that day's post is lost. But the sheriff may reside in Westmoreland, which is a two days' post going and a two days' post coming, and consequently the sheriff will have but one day to make his return. To do this he may, perhaps, have to send to a distant part of the county. Again, as there is one day in every week, in which, as in other counties, no post goes to London, in such a case it may happen that it would be next to impossible for him to make his return in due time, according to the exigency of the rule. Supposing the rule to be served after post-time on Tuesday evening, it cannot reach the sheriff before Friday morning. If he should be able

to prepare his return that day, he cannot send it off until Saturday evening. The return, therefore, cannot reach town until Monday morning.

A similar difficulty, only not to quite the same extent, will occur in making his return in due time if the rule should be served before post-time at the London office. Supposing the rule to be served on Tuesday, before post-time, the sheriff's agent in the country cannot have it before Thursday morning. Supposing any accident to occur, or difficulty to arise, by which he is prevented from being able to send off his return by Thursday's post, he cannot send it off then till Saturday's post. Consequently his return will not reach London, in that case, before Monday morning. It is true that it may be said, the sheriff has thus one day more to prepare his return than he would have under the previous state of facts, and therefore that if the rule is served before post-time in London a great portion of the difficulties under which the sheriff is placed will be obviated. Still, however, the sheriff is placed in a very perilous situation, from which it will result, that, from an accident totally unconnected with any impropriety on his part, he may be fixed or become liable to an attachment. In addition to these difficulties, must be remembered the disposition which has latterly been manifested by the Courts to narrow the period within which relief will be given to the sheriff, under the 1 & 2 W. 4, c. 58, § 6, (the Interpleader Act).

Under all these circumstances, it is suggested, that some alteration ought to be made in the practice of the Courts as to the period within which the sheriff ought to be bound to make his return, at least in the case of country sheriffs. If the time were extended to eight days, where the rule is served before post-time, or to nine days, where it was served afterwards, perhaps the difficulty in which the sheriff is now placed might be removed.

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#### LOOSE LEAVES FROM THE DIARY OF A NOBLE AND LEARNED LORD.\*

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Monday, Nov. 10.—Dined with my Lord Mayor, and was amazed to find that I was

\* The above were picked up (says a correspondent) in the Rue Rivoli in Paris, between the Hotel Meurice and the Hotel de l'Europe.

rather coldly received. Spoke, but, I must say, made rather a mess of it, not knowing exactly what would do for my fellow citizens. Told old F., in private, however, that I was much more of a Tory than he supposed. As I was going out of the Hall that vulgar noodle G—— had the assurance to accost me, although M—— was with me. The familiarity of these greasy mechanics is intolerable!

Wednesday, Nov. 12.—Lord S—— is dead! What effect will this have? The only plan is to make me premier. It must come to this; the country is in fact only safe in my hands. M—— is much too straightforward in his notions. Shall I write to the K—— about it to-night? At all events they cannot do without me.

Friday, Nov. 14.—What can all this mean? Turned out!—pooh! pooh! impossible! I must hear from the King or the Duke. I should like to see a Cabinet formed without my concurrence!

Saturday, Nov. 15.—No message yet! The Duke has *not* applied to me, although I told him in the last E—— R——, that I would receive an application with favour. Told my porter to spread a report that I was *not* going out.

Sunday, Nov. 16.—M—— came here in a rage about this report. Told him it was all a lie.

Monday, Nov. 17.—Contradicted the report at the Court of Chancery next morning. This audience was an unlucky one. H——, W——, S——, and K——. They all grinned, I dare say, to themselves; but what is that to me. I'm not going out for all that. \* \* \*

The affair grows serious. It surely can't be that I am to give up. The K—— looked infernally black I must say, and they positively say that L—— is to be C.

Wednesday, Nov. 19.—It's all true. I must give up on Friday, as they talk of applying for a search-warrant for the G—— S——. Bring another bottle; I must get through ten more causes before I sleep; but that is easy work; the hearing counsel is the only troublesome part of it.

Friday, Nov. 21.—Fairly gave in to-day, but have thought of a new plan. Intend to talk to L—— of an excellent scheme for preserving the Courts of C—— and E—— for us for our lives. If he will make me C. B., when I'm out, I'll do the same for him when I'm in. Half a loaf is better than no bread.

Sunday, Nov. 23.—Wrote to L—— about my new plan. Can't wait for an

answer however; but there cannot be any doubt surely. If I was fit for C—— I must do for C—— B——.

Tuesday, Nov. 25.—Off to Paris. No answer yet; wrote again to L——.

Saturday, Nov. 29.—Received a letter from L——, telling me that he cannot say anything about the matter; as much as to say that he won't have me at any price. Wrote off immediately to decline the place which he had already refused me.

Dec. 1—10.—These Parisian idiots do not bite as I expected. I don't seem to have caused much sensation.

Dec. 17.—It's all over. L—— t, L. C.; S—— tt, C.B., &c. &c. I have just heard it all. Patience, however, and shuffle the cards.

† \* †

## THE PROPERTY LAWYER.

No. XXXVIII.

### CHARGING BENEFICE.

We have repeatedly adverted to the 13th Eliz. c. 20, which prohibits all chargings of any benefice with cure, with any pension or profit out of the same, to be yielded or taken; and we have shewn how a warrant of attorney may be drawn to enable a clergyman to grant an effectual charge on his benefice. See 2 L. O. 196, *Kirlew v. Butts*, 2 B. & Ad; *Newland v. Watkin*, 9 Bing. 113, and 5 L. O. 119. It will be seen that by the following case a composition by a clergyman with his creditors, which indirectly affects the profits of his living, is within the statute.

In answer to an action for a debt of 253*l.*, due from the defendant to the plaintiff, the defendant put in an agreement for a composition entered into between the defendant and such of his creditors as signed the same, who thereby agreed not to sue, arrest, or molest the defendant, "in consideration that the future income of the defendant might be received by the Rev. Harry Lee, or some other person duly appointed by the defendant, and applied in liquidation of the defendant's debts, after providing a competent stipend for a curate to serve the church." The defendant had no income other than the profits of a benefice with cure of souls, amounting to about 148*l.* a-year. Mr. Lee had received the amount, and after allowing 90*l.* a-year for the performance of the duty, had distributed the residue, with the sanction of the defendant, among the defendant's creditors. The defendant, however, had never signed the agreement.

The plaintiff, upon production of this agreement, was nonsuited, with leave to move to enter a verdict for the amount of his debt. Accordingly, *Culeridge*, Serjeant, in Easter Term, obtained a rule *nisi* to that effect, on the ground that the agreement was not binding on the defendant, for want of his signature; for want of consideration; and as an infraction of the stat. 13 Eliz. c. 20.

*Tindal*, C. J.—The question brought before the Court in this case is, whether the agreement for a composition entered into between the defendant and such of his creditors as signed the same, operates as an answer to the present action. By the terms of the agreement, the several creditors who signed the same agreed not to sue, arrest, or molest the defendant, "in consideration that the future income of the defendant might be received by the Rev. Harry Lee, clerk, or some other person duly appointed by the said defendant, and applied in the liquidation of the said debts." It was found at the trial of the cause, that the defendant had no other income than the profits of a benefice with cure of souls. The agreement may therefore be considered to refer to the income of the defendant arising from his living, and no other. The objection made on the part of the plaintiff is, that the agreement is void by the statute 13 Eliz. c. 20, by which "all chargings of any benefices, with cure hereafter, with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, shall be utterly void." The effect of the instrument, supposing it to have any effect whatever, is to appropriate the future profits of the living to the payment of the debts of the defendant; for we cannot think the clause, by which it is provided that a competent stipend for a curate to serve the church shall be first paid, will take the agreement out of the statute. There are many purposes to which the profits of a benefice ought to be employed, on principles of public policy, besides the finding of a curate, such as the repairs of the chancel and parsonage, the money payments to which the church is liable, and the like. The effect of the instrument, therefore, although not operating as a direct charge, is an agreement to charge the profits of the living; and if such an agreement were not held to fall within the prohibition of the statute, all its purposes might be avoided with the greatest facility.

But, independently of the objection under the statute of Eliz., it appears that this agreement was never signed by the defendant. In case, therefore, the creditors should sue upon it, they would be met by the preliminary objection, that a contract for the profits of a living to be paid over to a trustee or receiver, was a contract "for an interest in or concerning lands, tenements, or hereditaments," and that no action would lie upon it, as it "had not been signed by the defendant, or by any person thereunto by him lawfully authorized." We think, upon this ground also, the agreement for composition is not of such a description as can be held a bar to the present action. For



the principle on which such an agreement is held to operate as an answer to an action by a creditor who has come into it, is, that there has been a substitution of a new agreement, by mutual consent, and on good consideration, in the stead or place of the old contract. This is the point established by the case of *Good v. Chessman*, 2 B. & Adol. 328, to which we entirely accede. The new or substituted agreement must, therefore, of necessity, be one which is legal and valid; or the whole ground on which the release of the former contract depends, is destroyed. Inasmuch, however, as the agreement in question is liable to the objections above adverted to, we think it fails as a composition that can be enforced at law.

Rule absolute for entering a verdict for plaintiff for 253l.—*Alchin v. Hopkins*, Clk. 1 Bing. 99.

## REVIEW.

*Practical Precedents in Pleading, prepared in accordance with the recent Rules and Statutes; with Explanatory Notes and Practical Directions, and Preliminary Remarks upon the Effect and Application of the late Rules in Pleading.* By Charles Petersdorff, Esq. of the Inner Temple, Barrister at Law. A. Maxwell.

MUCH misunderstanding exists on the subject of Special Pleading in general, and the alterations which have taken place under the new Rules of Hilary Term, 1834. The science of pleading, "says Mr. Petersdorff, (pref. p. iv.) has been for centuries distinguished for its scholastic logic, its admirable distribution of the most intricate and varied facts, its masterly separation of non-essential matter from material details, its presenting reasons and giving arguments in its adroit combination of circumstances, its excluding inferences without giving them a direct negative, and its making each new fact a sustaining adjunct to particulars antecedently disclosed."

This is high praise, but is by no means overcharged; for we think that very eminent powers are necessary to the performance of the duties of a skilful special pleader; and we cannot better remind our readers of the important nature of the *principles* of pleading (which remain unaltered) than in the words of Mr. Petersdorff's introduction.

"In the application of these rules, it must constantly be borne in mind by the student and practitioner, that the science of special pleading mainly consists in the appropriate delineation of *facts* upon the record, as contradistinguished from a statement of arguments,

legal deductions, or the contemplated evidence. and the disclosure of those facts in such a manner as the affirmative allegations and counter averments of the litigant parties may be deduced, as speedily as is consistent with the requisite precision, to a single, certain, and material point or issue. In the recent rules the accomplishment of this object has been sedulously observed and the application of pleading to any other less desirable end adequately repressed by the infliction of exemplary costs. Pleadings being, therefore, the reciprocal representation of the plaintiff's and defendant's case before the Court and Jury, it was and still is necessary that the statement should accurately correspond with the facts proposed to be established in evidence. Without an adherence to this identity between the facts proved and the description of them on the record, the parties would be destitute of all information as to the nature of the charge or defence they are to encounter upon the trial of the cause. The necessity, however, of this exact concurrence between the circumstances disclosed in the pleadings, and those sustained by proofs, was for centuries (with occasional deviations) so rigidly insisted upon, that the otherwise undisputed rights of suitors were not unfrequently sacrificed; and sometimes carried to an extent that exceeded the limits for which the doctrine as to variances (as these discrepancies between the record and facts proved is called) was originally established. Its principal object being to prevent surprise, and to secure a sufficiently explicit and intelligible mutual statement between the parties, as would enable them to come into Court adequately prepared to investigate the matters in litigation, and not to obtain a resemblance between the facts detailed on the record and those proved upon the trial, so exact that a microscopic examination could not detect the smallest incongruity. The occasional perversion of the rules respecting variances compelled suitors to resort to a multiplication of counts and pleas. Prudence rendered it incumbent upon them to state their complaints or answers in all the forms and varied combinations ingenuity could devise, or subtle reasoning shew were colourably distinguishable. The great, yet often under the circumstances justifiable, length of pleadings thus occasioned, compelled the legislature, by the statute 9 Geo. 4, c. 15, and by the more extensive provisions of the 3 & 4 W. 4, c. 42, to give power to a Judge to amend the misstatement of facts on the pleadings of either party, at any time before or pending a trial, upon equitable conditions. And the new rules, in order to give full effect to these enactments, have prohibited the continuance of the practice of inserting several counts and pleas, and confine the litigant parties to one correct representation of the demand, or grievance, or denial, or discharge, or avoidance, of the obligation sought to be imposed, unless a distinct subject matter of complaint, or distinct ground of answer or defence, is intended to be established in respect of each."

The consequences of not complying with the New Rules are stated by Mr. Petersdorff as follows :—

"If too many counts be inserted in a declaration, or too many pleas be pleaded, a Judge may order the superfluous ones to be struck out, with costs. If no application to strike out be made, the party who fails in proving such counts or pleas shall pay the opponent the costs incurred by such issues; but if after application to strike out they be retained at such party's request, who ultimately fails to establish them, the Judge may certify, and *deprive such party of the costs of the issues on which he has succeeded.*

"Improperly intituling, introducing a venue in the body where not matter of local description—inserting *actionem non, precludi non, or prayer of judgment*, where not necessary—form grounds for a summary application to the Court or a Judge; but if no signature of counsel be attached where essential, or order to plead several pleas when requisite be obtained, judgment may be signed as for want of plea."

The design of the present work may be best collected from the author's own statement.

"The Collection of Precedents in Pleading now offered to the student and practitioner comprises all the ordinary variety of forms in suits of frequent occurrence; and the materials have been selected rather with the design of supplying precedents of acknowledged and daily utility than forms of a very technical or complex character. When pleadings of the latter description are required, recourse must necessarily be had to the more voluminous publications, (as Mr. Chitty's invaluable work on Pleading; or Wentworth's Precedents, or the Ancient Entries,) to MS. collections; and to those members of the profession who, from education, and knowledge of the principles of the science of special pleading, and experience in drawing, can enable them to prepare pleadings without the assistance of printed forms or precedents closely resembling the particular circumstances intended to be made the subject of judicial controversy.

"In the compilation of the work no inconsiderable care has been bestowed and anxiety endured. The forms have been settled with a rigid adherence to the valuable examples given in the Rules of H. T. 2 W. 4, and the principles inculcated by those of H. T. 4 W. 4; and no reasonable opportunity of rejecting verbal redundancies, grammatical improprieties, or excluding superfluous allegations, has been permitted to escape."

Mr. Petersdorff has added notes to most of the precedents, in which he explains the application of the forms, and states such particulars as may assist in converting them into practical drafts. The forms are very concise, and display great labour and atten-

tion; but, as the author acknowledges, they will not supersede the more voluminous collections.

## PRACTICAL NOTES.

We have been favoured with the following Notes of some Points of Practice decided in the Court of Exchequer last Michaelmas Term, on the acturacy of which our readers may rely.

### DOUBLE PLEA.—TIME TO PLEAD.

On the 31st October an order was obtained for a week's time to plead; on the 3d Nov. an order for particulars of demand; and on the 7th the particulars were delivered at eight in the evening; on the 8th a summons for further time was taken out (though the time under the first order had not expired), but a consent was refused. On the 8th a double plea was delivered without obtaining a rule to plead several matters; on the 10th judgment was signed.

The Court held that the General Issue and Statute of Limitations, concluding with a verification, require a rule to plead several matters and the signature of counsel, and refused to set aside the judgment on that ground. But being referred to the case of *Pepperwell v. Burrell*, 2 Dowl. P. C. 674, took time to consider. Excheq., 22 Nov., 1884. *Chilton* for the plaintiff.

The Court subsequently gave judgment, deciding, that although the plea was a nullity, the plaintiff was not warranted in signing judgment before the time for pleading had expired. *Mather v. Billing*, Nov. 25, 1834.

See *Edensur v. Hoffman*, 2 C. & J. 140, *contra*, which is now overruled by the above decision.

[A letter from a correspondent, p. 126, stated some of the particulars of the above case.]

### WITNESSES EXPENSES.

Mr. Pitt, in person, moved to review Master Collett's taxation; and the Court granted the rule, because one guinea per day had been allowed to Mr. Cockell (a clerk in Somerset-house, and editor of the Law List), for several days' attendance as a witness. The Court said, that as a public officer, he ought not to have been paid more than one guinea in the whole. *Pitt vs.* — Excheq. 3d Nov., 1834.

### BAIL.

Exception entered because the affidavit of the bail stated they were "possessed" of, &c.

On the justification, *Richards* produced a fresh affidavit, stating the bail "to be worth," &c.; and the Court permitted the justification on this new affidavit, without costs on either side. *Anon.* Excheq. 3d Nov. 1834.

## STAMP DUTY ON ASSIGNMENTS OF MORTGAGES.

This being still *voxata questio*, some thinking that every transfer of mortgage, whether a further sum be added or not, is subject to the duty 1*l.* 15*s.*, and by consequence to the progressive duty of 1*l.* 5*s.* besides the *ad valorem* duty when a further sum is added; it seems desirable to ascertain the *preponderance* of professional opinion on this point, by which the practitioner may perhaps be safely governed; to which end allow me to set out the words of the statute, and to subjoin the opinion of an eminent conveyancer, with an observation of my own, and to invite the opinions of your readers, whether the *ad valorem* duty be alone chargeable when a further sum is added, or the 1*l.* 15*s.* be as well in that case as when there is no addition, also chargeable; and what must be the *progressive* duty in the one case, and the other—and further, in case of the transfer of a mortgage *in fee*, where a bargain and sale or lease for a year is used, (and which by 55 Geo. 3, c. 184, schedule 1558, is charged according to the amount of consideration money expressed in the release), what is the duty chargeable, 1*st.* in case of a transfer without further sum added; and next, in case a further sum being added, it do not amount to 150*l.*?

By 55 Geo. 3, c. 184, schedule page 1589, on a transfer of mortgage, provided no further sum was added, the duty was 1*l.* 15*s.*, progressive 1*l.* 5*s.*; and in all other cases a transfer was charged as an original mortgage. By 3 Geo. 4, c. 117, entitled “an Act to reduce the stamp duties on reconveyances of mortgages and in certain other cases,” the former duties were repealed, and “instead” thereof the following are imposed; upon any transfer of mortgage, provided no further sum be added to the principal already secured, 1*l.* 15*s.*, progressive 1*l.* 5*s.* And if any further sum be added, the *ad valorem* duty on mortgages payable under the said act (55 Geo 3), shall be charged only in respect of such further money.

It appears from the title of 3 Geo. 4, that the intention was to reduce the stamp duties in all the cases adverted to; and it could not have been contemplated that in any case the act would operate to increase them: but if it should be held that the 1*l.* 15*s.* is cumulative, it would follow that on every transfer of mortgage where a further sum is added not exceeding with the original sum 200*l.*, the duty will be higher than on an original mortgage for the same sum.

Examples of increase: original mortgage for 50*l.*, further sum added 50*l.*, stamps 1*l.* 15*s.* for assignment, and 1*l.* *ad valorem*, total 2*l.* 15*s.*; whilst an original mortgage for 100*l.* is but 1*l.* 10*s.*

Original mortgage for 100*l.*, further sum added 50*l.*, stamps 1*l.* 15*s.* and 1*l.*, total 2*l.* 15*s.* for 150*l.* only; whilst an original mortgage to the amount of 200*l.* is but 2*l.*

To avoid this I know it is the practice of

several of my friends, in these latter cases, to disregard the assignment stamp, and to take the stamp as for an original mortgage for the entire sum secured by the transfer; but besides that this saddles the mortgagor with a greater expense than is necessary, if the true construction be in favor of reduction, it does not satisfy the law if it be in favor of increase; so that in passing by one difficulty we certainly encounter another.

The following is the opinion referred to:—

“The 2nd. section of the new stamp act 3 G. 4, c. 117, is ambiguously framed, and it has always appeared to me probable that the legislature, (or rather the framer of the act) meant the transfer duty to be paid in every case of a transfer, and the *ad valorem* duty in each case of a further sum being advanced, in respect of such further sum; but this is not the construction which the Stamp Commissioners have put on the clause, for they construe it according to the strict letter, which certainly is, that a transfer duty is only to be paid where, (or provided) no further sum be advanced; but if a further sum be advanced, then the mortgage *ad valorem* duty must be paid in respect of such further sum, but no transfer duty. In truth, the deed must have the same stamp as if it had been an original mortgage deed for the further sum only, without at all considering the transfer. Such is undoubtedly the strict meaning of the letter or words of the section; and as the Commissioners have sanctioned this construction, and the Courts are inclined to construe the Stamp Act mildly, I consider that deeds stamped according to this construction are safe; and therefore that the present deed may be pronounced validly stamped. There is however a mode of avoiding the point, viz. by simply taking a transfer of the old mortgage without any further sum, and then a separate deed of further charge for the further sum. However, considering the number of mortgages which have been stamped under the sanction of the Commissioners’ construction, and which is also the short literal construction, a deed so stamped may be now I think acted upon with confidence.

“J. P. Inner Temple, Sept. 26, 1834.”

With becoming deference, however, I cannot see the reason for advising separate deeds; for by having both stamps, or the amount thereof, on one and the same deed, the doubt, if it exist, is equally obviated. But this is no answer to the mortgagor’s query, “How much am I obliged to pay?” it is not satisfactory to him to be told, “you must probably pay too much, to guard against paying too little:” and the indolence with which a difficulty of this kind is sometimes evaded, and in cases of still higher consideration, cannot be sufficiently deprecated. It certainly behoves the profession as a body to settle and determine on a uniform practice, and in all cases of doubt to incline favorably to their clients’ pockets, consistently with the best construction of a statute, and to act fearlessly on it, fully relying that the courts of law, especially as now composed, would, in the event of a decision being de-

manded, not only be influenced by the most liberal consideration, but consider themselves bound by the general practice; and whenever a doubt exists, particularly on a revenue statute, give the subject the benefit of such doubt.

J. A. M.

## CHARACTER OF THE OLD REPORTERS.

[Concluded from p. 133.]

We conclude the extracts from Mr. Ram's "Science of Legal Judgment," on the character of the early Reporters.

**Keble.**—Chief Justice Willes mentions Keble as a reporter who "seldom enlightens any thing." Lord Mansfield and Lord Kenyon style him, "a bad reporter." Counsel having relied on a case in 3 Keble, Ashhurst, J., observed,—"This book does not stand in the highest degree of authority in general; and I do not think the intrinsic merit of the report itself of this case will add much to its authority." And, on the same occasion, Lord Kenyon said,—"As to the case cited from 3 Keble, my brother Ashhurst has already observed, that that reporter is not always accurate; and if any instance were wanting to warrant the observation, the case referred to would prove it; because he there referred to another case of his own reporting, as of the preceding term, which is not there to be found.

**Levinz.**—Of him Lord Mansfield says,—"Levinz is a much better reporter than Keble." And where a cited case was reported by both, Lord Kenyon observed,—"The case cited from Levinz is entitled to greater consideration than that in Keble, who was a bad reporter." The same superiority Lord Mansfield seems to have assigned to Levinz, with reference to another case reported by him and also by Keble.

**Mosely.**—In a cause in the King's Bench, counsel relied on a case that he cited from these reports, "which book, Lord Mansfield told him, he should not have quoted." In another cause, counsel having cited a case from the same reports, Thompson, B. observed,—"As to the case in Mosely, the authority of that book is very small." Another, and more favourable, opinion of these reports remains, however, to be shewn,—an opinion that will probably be considered to give preponderance to an advantageous judgment of them. Lord Eldon having mentioned a case there, takes occasion to state,—"In speaking of the book in which this case of *W. v. S.* is to be found, I wish to make one other observation. That book has been brought into some disrepute by a saying of Lord Mansfield's, that no man should cite Mosely. I myself think very differently from Lord Mansfield on that subject, having always considered Mosely's Reports as

a book possessing a very considerable degree of accuracy." And, according to another report of the case in which this passage is found, Lord Eldon observed, that "although Lord Mansfield has said that Mosely ought not to be cited, there are cases of great consequence in those reports."

**Noy.**—His reports being mentioned by Buller, J., this learned Judge adds,—"But that book has always been considered as a bad authority. A reason for this is assigned by Twisden, J., when, "for the case in Noy's Reports, 23," he said, "he wholly rejected that authority; for it was but an abridgment of cases by Serjeant Size, who, when he was a student, borrowed Noy's Reports, and abridged them for his own use. Another account of the same opinion is,—"Noy, 23, I wholly reject, as only an abridgment of cases per Serjeant Says, when a student."

**Rolle.**—Of a case reported by both Rolle and Palmer, Lord Parker, C. J., prefers the report by Rolle, observing,—"I have looked into the case of *S. v. M.* in Palm. 100, and 2 Roll. Rep. 166, 189, which Rolle never transcribed into his abridgment. He being at that time the expert reporter, has given the fullest account, and is chiefly to be regarded. For that case is 17 Jac. 1, and Palmer was not Attorney General till King Charles the Second's restoration (1 Sid. 465), and must be very young when that case was adjudged.

**Sulkeld.**—Lord Hardwicke, mentioning a case in 3 Sulkeld, parenthetically says,—" (which by the by is a book of no authority, though the two first volumes are)."

**Saunders.**—Of him, Yates, J., says,—"Saunders was much the most accurate of the reporters of his time." And Lord Eldon, in the year 1799, speaks of the same reports, as "that excellent book, the Reports of Saunders, made more excellent by a late edition."

**Strange.**—Referring to a case reported by him, Sir A. Hart states,—"Although Strange is not a book we can place much confidence in, yet, in this particular instance, it appears to be a very able and sound judgment, and well reported."

**Williams.**—Sir. B. P. Arden, citing a case, says,—"It is most accurately reported, as most of the cases are, in Peere Williams."

**Winch.**—Of his reports Lord Kenyon states,—"The cases in Winch are in general well reported; but in the preface to Benloe's and Dalison's Reports it seems as if those were not really the reports of Sir H. Winch; for it is there said, 'the book called Winch's Reports, but improperly enough ascribed to that learned judge.' And indeed it appears that several of the cases in that book were decided after Sir H. Winch's death."

Brown's Reports, Mr. Ram notices as follows:

**Brown.**—On counsel mentioning a case in Brown's Chancery Reports, Sir L. Shadwell observed, it is "one of the cases in Brown, upon which no reliance can be placed, with

regard to the statement. "The value of Brown's Reports, it may be noticed, is greatly augmented by the corrections and additions made thereto, by Mr. Belt and Mr. Eden, in their editions of that work." 4 Sim. 173.

Burrow is thus described:

*Burrow*—When Burrow reports a case, in which the Court returned a certificate to the Court of Chancery, but did not publicly give the reasons of their opinion, full reliance may be placed on his statement of that opinion, and on the grounds of it, as supposed by him. For, speaking of such a case, Buller, J., says, that Burrow "certainly had the highest assistance in stating what he calls the probable grounds of the judgment;" and that assistance is explained by the same learned judge, when on a former occasion, citing the same case, he said,—"It has been openly acknowledged by Lord Mansfield, and I have had repeated opportunities of hearing it from him in private, that he has given to Sir J. Burrow his own note and opinion of a case, which he could not deliver publicly in Court; for it was not at that time the practice of this Court [K. B.] to give their opinions here in cases which came from the Court of Chancery."

In addition to these reports bearing the name of the Reporter, there are various collections of cases published anonymously, of which the following judicial remarks have been accurately gathered by Mr. Ram:

*Cases in Chancery*.—Lord Mannors, expressing his dissatisfaction with a case in the first volume, says,—"It comes from a book of very doubtful authority." And on Lord Eldon mentioning in the House of Lords the propriety that the Registrar's book should be searched for a particular case in the second volume, Lord Redesdale concurred by saying,—"Yes; for the Chancery Cases are very incorrect."

*Modern Cases in Law and Equity*.—Wilmot, J., citing a case in the first part or volume of these Reports, observes,—"That case is reported in Modern Cases in Law and Equity; but it is totally mistaken there, as indeed are nine cases of ten in that book."

*Precedents in Chancery*.—Lord Loughborough named these reports, "a book of considerable authority." For mentioning a case there, which he found to be "totally misreported," and adverting to a circumstance connected with it, he says,—"I thought it right to mention this, lest that case being found in a book of considerable authority might mislead again."

*Select Cases in Chancery*.—These Reports Lord Redesdale calls, "a book of no great authority."

Of some of the abridgments of Cases, the following observations have been collected by the author:

*Brooke's Abridgment*.—Heath, J., with refer-

ence to a remark that had been made by Rooke, J., says,—"I observe my brother Rooke seems to think, that what is laid down by Brooke is not of much authority; but I have always understood that the abridgers had access to the records themselves; and many cases, that appear in the Year Books with an Adjournatur, are laid down by them as decided; which could be only by their having access to the records."

*Rolle's Abridgment of many Cases and Resolutions of the Common Law*.—This work, Lord Kenyon mentions, was published under the inspection of Sir M. Hale. And Graham, B., calls it, "one of the best books of the kind we have." Twisden, an eminent Judge in the reign of Charles II., with reference to an opinion of Rolle that had been cited, says,—"That was his opinion, it may be, when he was a student. You have in that work of his a common place, which you stand too much upon. I value him where he reports judgments and resolutions. But otherwise it is nothing but a collection of Year Books, and little things noted when he made his common place books."

*A General Abridgment of Cases in Equity*.—The following observations have been made on the two volumes of this Abridgment, considered as a work containing reports of cases. The first and second volumes do not, it will be seen, bear the same character. The first volume Sir R. P. Arden designates as "a very good book." Buller, J., was satisfied of the accuracy of a report of a case there, "considering the authority of the book in which that case is contained." Also Eyre, C. J., concluded it to be probable, that a case there reported was correctly stated. Sir T. Plumer and Lord Mannors concur in opinion, that the second volume is a book, "certainly, of no great authority." Lord Eldon, speaking of a case reported by Barnardiston, observes in continuation,—"The case happens to be reported likewise in another book of no very high character,—I mean the second volume of the Equity Cases Abridged. It is not so high in character as the first volume of the Equity Cases Abridged." A testimony favourable, however, to this report of the case his Lordship elsewhere offers in these words:—"The case is reported in the Equity Cases abridged, and reported from a valuable manuscript, as I know, from having had the assistance of a genuine report from the library of Lord Redesdale." Sir R. P. Arden, relying on a case in the second volume, and which, it would seem, he supposed to be reported, and not merely abridged, there, says,—"Though this book is not a book of the first authority, I must be guided by such cases as stand in point there; and particularly by a case which contains so much sense, as induces me to rely upon it, in conjunction with the other authorities."

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### COSTS.—LIEN.

*A solicitor conducting several actions and suits in equity, for parties who are declared entitled to the fund in dispute, in the principal suit to which the other suits and actions have relation, has a lien for all his costs on the fund recovered; and the trustee thereof, having notice of the claim, is bound to pay it.*

Mr. Kindersley moved to discharge an order made by the Vice-Chancellor, refusing to direct the payment of costs to a solicitor, who claimed them under the following circumstances:—He had been concerned for persons who were parties to the suit, in defending for them an action at law, and also in defending another suit in this Court, each of them,—action and suit—relating to matters involved in the present suit. He claimed, therefore, to have a *lien* on the funds, to which the defendants were declared in this suit to be entitled, for the amount of his costs generally; and he gave notice of such claim to the trustee of the fund before the trustee had paid over to the parties their respective shares thereof. The trustee, however, paid over the fund, and the motion now on behalf of the solicitor was that the whole of the costs might be taxed by the Master, and that the amount which should be found due to him, might be paid to him by the trustee.

Mr Lloyd opposed the motion, and contended on the part of the trustee, that no such *lien* as the solicitor claimed, could operate as against him (the trustee); and that even if it did the *lien* on the funds in this particular suit, did not extend beyond the amount of the costs which had been incurred respecting the client's share in that fund. The Vice-Chancellor adopted this view of the case, and his Honour's decision was consistent with former decisions in like cases.

The Lord Chancellor was of opinion that the solicitor had a general *lien* for all his costs, and that the trustee having notice of that *lien*, and of the claim, was bound not to part with the money in his hands until that claim had been satisfied. He therefore ordered the taxation of the bills, with a view to payment being made by the trustee of so much as the solicitor should establish to be due to him.

*Townsend v. Reed*, at Westminster, Nov. 3d and 4th, 1834.

### Equity Exchequer.

#### TITHES OF A MILL.—MODUS.

*Held that a modus in lieu of tithes of a water cornmill anciently working three pairs of stones only, to which two pairs were recently added under the same roof, does not cover the additional stones, if more stones than were anciently fixed can be*

*worked at the same time, and the mill's capacity of grinding thereby increased.*

This was a bill for an account of tithes of a water-cornmill; a *modus* was pleaded. It was replied that the *modus* was destroyed by reason of the addition of new stones, giving an increased power of grinding to the mill. The question to which the arguments of counsel mainly applied was, whether the *modus* covered the additional stones.

The following judgment upon that question comprises as much of the facts and arguments as will convey a sufficiently clear view of the case, and of the point decided.

Lord Lyndhurst, Chief Baron.—The plaintiff in this case is the vicar of the parish of Hemel Hempstead in Hertfordshire; and he has filed his bill for an account of tithes of part of a mill there situated. It appeared that anciently the mill was worked with three pairs of stones, and that two additional pairs have been added. A *modus* has been insisted on by the defendant, in discharge of the claim of the vicar; but upon the part of the vicar it is contended that this *modus* only extended to the mill in its ancient state, and that the plaintiff is entitled to the account in respect of the additional stones. The question is, whether the *modus* covers the mill in its present state, independently of authorities and express decisions: I shall first consider the case in this way:—The *modus* is supposed to be founded on an ancient agreement; but the plaintiff insists that it was discharged as an ancient agreement; and the question is, whether that discharge applies to the whole of the mill in its present form. It is contended for the vicar, that it does. If it were a *modus* the same principle would apply, and the question then would be, is this *modus* evidence of an ancient agreement? if so, what is the nature of it, and what are the principles upon which it is founded? Most of the decisions to which I shall refer are cases of *modus*, and some of them are similar to the present. The *modus* would be evidence of an ancient agreement, and the question would be, what am I to consider as the basis of that agreement. I should consider the *prima facie* basis of it to be the power and capacity of the mills to grind corn, and the measure of corn ground; and that would depend on the structure of the mill, and on the number of the stones used, according to the simple structure of mills in ancient times. But it is unnecessary to resort to speculation; it is safer to advert to, and rely upon, authorities, and to see what is to be collected from them, with respect to the decision to be pronounced in this case. The first case to which I shall refer, is the case in *Brownlow and Goldthorpe*,<sup>a</sup> where the Court is stated to have decided, that if you have but one pair of stones in your mill, and pay a rate for them, and afterwards put on another pair of stones, new tithes must then be paid in kind. It has been very properly said, that although this case is reported in a book of some authority, yet the facts are not stated, and

<sup>a</sup> 1 Brownlow and G. 32; 1 Eag. and Y. 203.

it does not appear whether it is an *obiter dictum* or a decision. If it is an anonymous case, and has the character rather of a loose note than of a report, and is therefore open to observation. But if what the Court is stated to have said can be called a decision, it is one in point here, and it is immaterial whether it was a *modus* or a mill discharged in the original agreement, as an ancient mill. In opposition to this case, there is cited that of *Gumble v. Falkingham*,<sup>b</sup> referred to in *Eagle and Young's Tithes Cases* as a case of prohibition. *Gumble* pleaded a *modus* of 2s. 6d. for a water-mill; *Falkingham*, the rector, replied that as to the water-mill, an additional power of new stones had been added, by which the *modus* was destroyed. *Per Curiam*: "the *modus* is not destroyed by a new pair of stones." Now this decision seems to be at variance with the anonymous case, to which I have referred as cited in *Brownlow*. But the parties in this suit have exercised considerable industry, and have collected the real facts in that case, which do not appear to be at all at variance with the *dictum* in *Brownlow*. For it came out on suggestion, and what was stated by the Court on the motion for prohibition, that these additional facts appeared; the depositions of witnesses were before the Court, and one of these witnesses deposed that "he had known the mill when it had but one pair of stones; that he remembered the laying down of the other pair of stones, which was about thirty years previously; that since that, although there were two pair of stones in the mill, only one pair of stones was used at a time, and there was still only one pair of stones, and one stream and one water-wheel. Thus, first there was one pair of stones, and although a second pair was added for convenience, still the mill could grind only with one pair of stones at a time. Another witness said, the mill paid 2s. 8d. tithe; that there were two pair of stones and one stream and one water wheel as now; but he said, that the two pairs of stones could not be worked together; that when one was grinding the other was standing still." It does not appear to me under such circumstances, where there was a *modus* for one pair of stones, that the Court could decree an account, as there was only one pair of stones worked at a time. Thus the case of *Gumble v. Falkingham* stood, and when these facts are known, it cannot be considered at variance with the other case referred to. There is another case of *Goodwin v. Wortley*,<sup>c</sup> which was a bill filed by the rector for an account of the tithes of Wortley mill. The defence set up was a *modus*, and the miller filed a cross-bill to establish the *modus*, and an issue was directed which was in these words: "Whether the sum of 2s. a year was due and payable in lieu and satisfaction of tithes of all corn ground at the mill." A trial was had, the jury found for the defend-

ant on the issue, adding, "that anciently the mill had two pair of stones, but another pair of stones had been added, which were carried on the same frame and wheel as the others, but that the wheel could only work two pairs of stones at the same time." The case coming on upon the *postea* for further directions, the bill was dismissed with costs; the *modus* was established. This case, therefore, falls within the same principle as that of *Gumble v. Falkingham*, where an additional power of stones had been added, but they could only work at the same time the same number of stones as were worked by the mill under its former construction. These cases come within the same principle, and do not appear to me to be at all at variance with the case to which I at first referred. I now come to the case of *Talbot v. Mayd*,<sup>d</sup> which was decided by Lord Chancellor *Hardwicke*. It was a case of this description:—There was a mill, that is, one building, and, as I collected, one water-wheel, one original moving power, and three mills under one roof; one was a corn-mill, the other two were fulling-mills, and all were moved by the same power. There was a grist wheel for the corn-mill, and fulling-wheels for the others. A *modus* of 6s. 8d. was insisted on for the mill. The Attorney-General there argued that it anciently was a fulling-mill; and the corn-mill and fulling-mill are now under the same roof, and the *modus* cannot extend to cover a new erected mill; for, as it is altered to a corn-mill, it must pay tithe in kind. The counsel for the defendant then insisted that the *modus* covered the mill, let the engine of the inside consist of wheels or of stones, and, therefore, changing the working part made no variation, but the *modus* would still cover it, as it was a mill, though of a different kind, and he cited a case from *Roll's Abridgment*, where the adding new stones to ancient mills did not alter or destroy the *modus*, where the stones were under the same roof, and worked by the same power—to which effect he also cited the case in *Carthew*, to which I have already referred. Lord *Hardwicke* said:—"I will consider these as two new corn-mills, but under the same roof. Suppose, first, an ancient mill under a building worked with one wheel, and the owner, under the same roof, thinks proper to erect two new wheels, and two new stones, I am of opinion that that is to all intents and purposes two mills, and he cannot cover them with the same *modus*. You might as well say he can erect another mill upon the same stream, and call it one mill." The effect, therefore, of this decision further confirms the *dictum* in *Brownlow*. It appears to me that this decision is strictly in point. It does not rest here, because there is a subsequent decision in which all these cases were revised: that was the case of *Manby v. Taylor*,<sup>e</sup> which came before Sir *W. Grant*, when Master of the Rolls. In that case there was a mill, consisting originally of one pair of stones only, to

<sup>b</sup> 1 Carth. 215; 1 Show. 284; 4 Mod. 45; 1 Ea. and You. 571.

<sup>c</sup> 2 Wood, 331; Gwil. 715; and 2 Ea. and Yo. 33, extracted from the book only, no where reported.

<sup>d</sup> 3 Atkins, 17.

<sup>e</sup> 3 Ves. & B. 71; S. C. 9 Price, 249.

which two new pairs were afterwards added. This fact was insisted upon in argument, viz. that in addition to the new stones, there was a new power added, namely, sails. In that case the Master of the Rolls decided on the authority of *Talbot v. May*, that there should be an account for the new stones, observing, that the cases cited were not easily reconcilable. But with the additional facts now brought before this Court, they all seem easily reconcilable. This case of *Munby v. Taylor*, decided by the Master of the Rolls, on the authority of *Talbot v. May*, is an authority in point, except that, in addition to the new stones, there was an additional moving power; but it appears from the terms of the decree, that nothing was insisted on with respect to this, because the Master of the Rolls directed the master to take an account of what was due to the plaintiff in respect to tithe for corn ground by the additional number of stones, by means of the arms or sails in the circular building added to the same mill; so that he ordered not only an account to be taken of the additional power given to it by the sails, but also of the additional quantity of corn ground by the new stones. It appears to me, therefore, that the authorities are all one way. The *modus* for mills, consisting originally of one pair of stones, does not cover, where an addition of stones has taken place, provided the mills are capable of working at one time a greater number of stones than were originally fixed. With this qualification all these cases are reconcilable. I am of opinion, therefore, that there ought to be a decree for the plaintiff.

There are some difficulties in the way:—First, there is a doubt whether the moving power has not been increased by the alteration in the construction of the water-works. Another question then arises, which does not appear to me to have been met by the depositions. I must know how many pair of stones were working at one time in the mill as it stood, and how many can work in it now, otherwise I cannot come to a satisfactory conclusion upon the evidence, and I therefore must direct an inquiry; and I am disposed to take the decree in *Munby v. Taylor* as the ground-work of my decree, directing in the first instance an inquiry as to whether there has been any additional power given to the mill by any variation in the water-works or otherwise, and whether there has been any and what increase in the number of stones capable of being worked at the same time, with liberty to state special circumstances.

*Mountain v. Warren*. Sittings at Gray's Inn Hall, after Trinity Term, 1834.

### King's Bench.

[Before the four Judges.]

FRAUD.—TRUSTEE.—DEED.—INSOLVENT.

*A memorandum not under seal cannot vary the effect of an instrument which is under seal; but a party will not be allowed the*

*benefit of such an instrument as the latter, unless he has fulfilled the condition on which that instrument was executed.*

This was an application for leave to issue execution against the defendant's property, according to the terms of an agreement into which the defendant had entered with the plaintiff, on his being discharged under the Lords' Act. It appeared that the defendant had become indebted to the plaintiff to the amount of about 200*l*. At the time this debt was contracted the defendant was in partnership with a person named Stringer; from him he afterwards parted, and one of the conditions of their separation was that he should receive an annuity of 200*l*. from Stringer. Fowle (the defendant), having fallen into great difficulties in pecuniary matters, assigned his property real and personal to certain trustees for the benefit of his creditors. Out of this property was excepted the before-mentioned annuity, which was reserved for his own private use. Wenham (the plaintiff), did not sign the trust-deed, but afterwards took the defendant in execution for his debt. He subsequently brought the defendant up under the compulsory clauses of the Lords' Act, in order to compel an assignment of the annuity. He however objected to give any account of it.

It was thought by the judge before whom he appeared, that as he had not signed the trust-deed the defendant was bound to account for the annuity, in his schedule. Fowle was ordered to execute to the Master, (Mr. Chapman), an assignment of all his effects, in trust for Wenham, in the usual manner, which being done he was discharged out of custody. Mr. Chapman, as Wenham's assignee, subsequently executed Fowle's trust-deed, and received a dividend under it. At the time of executing the assignment Fowle signed a memorandum, the effect of which was that the signature of the trust-deed was to be without prejudice to any proceedings which Wenham might institute to recover the annuity. One of the conditions contained in the trust-deed was that the defendant should make a full disclosure of all his property, real and personal.

Wenham afterwards finding that a sum of 200*l*. was due to Fowle on a mortgage transaction, which had been carried on previous to executing the trust-deed, but of which Fowle had said nothing to the trustees, information of this was conveyed to them, and they ultimately obtained the money. Of this Wenham refused to take any part, but obtained a rule to issue fresh execution against the defendant. An application was afterwards made to stay the rule, on the ground that Wenham's assignee had signed the trust-deed, which freed him from all liability, and therefore he could not now issue execution in respect of any debt to which that trust-deed referred; and that the memorandum signed at the time was not under seal, and therefore could not alter the effect of an instrument under seal.

Against this application it was contended that the trust-deed could not deprive the plaintiff of his right to proceed, because the defend-



ant had violated the condition on which the trust-deed was signed, by concealing the mortgage transaction under which the defendant had a claim to certain money.

*Per Curiam*.—We are of opinion that the memorandum in question cannot alter the effect of the trust-deed, which was under seal. But as the trust-deed was originally executed by the creditors on condition of the defendant making a full disclosure of all his property, and as it appears he did not comply with that condition but concealed a portion of it, we think that he is not entitled to avail himself of its benefits. The plaintiff therefore will be entitled to issue a fresh execution towards the liquidation of his debt.

Rule accordingly.—*Wenham v. Fowler*, M. T. 1834. K. B. F. J.

### King's Bench Practice Court.

ATTORNEY AND CLIENT.—CERTIFICATE.—ADMISSION.—COSTS.

*If an attorney has been admitted for more than a year without taking out his certificate, it seems he may take it out without re-admission; but whether he can or not, if he has conducted business after taking out his certificate under such circumstances, the client will not be damaged, but his proceedings will be held regular.*

A rule had been obtained in this case for the purpose of setting aside a judgment entered on a warrant of attorney, and the execution issued thereon, and discharging the defendant out of custody. The objection to the present proceedings was this; the plaintiff's attorney, it appeared, had been admitted more than a year before he took out his certificate; he then took it out and commenced practising. In the course of his practice he signed the judgment and issued the execution by which the defendant was now detained. This circumstance, it was contended, rendered the proceeding irregular, as the attorney should have been re-admitted before he practised, and that by his not being so re-admitted, he had been guilty of a misdemeanor.

On shewing cause against this rule, it was contended, that such re-admission was unnecessary; and if even the attorney were unqualified to practise, the plaintiff ought not to be damaged by his negligence.

In support of the rule it was contended, that re-admission was absolutely necessary after allowing so long a period to elapse without taking out his certificate. This could be seen by referring to what was the foundation of the 37 Geo. 3, c. 90, viz., the previously existing rules of Court. By them it was required that the attorneys should attend regularly at the commencement of each term, and if they omitted so to do for more than a year, they were off the roll. The above statute was only an enforcement of those rules. If by this omission the attorney was off the roll, and the proceedings were on the part of the plaintiff being conducted by an unauthorised person,

they must be considered as void, and therefore the rule *nisi* for setting them aside must be made absolute.

*Littleale, J.* (after taking time to consider) said there were contradictory decisions on the question as to whether an attorney, after allowing a year to pass subsequent to his admission, could be allowed to take out his certificate for the purpose of practising without re-admission. On that point he should give no opinion, although the inclination of his mind was that he might under such circumstances take out his certificate without re-admission. In this case it was not necessary to pronounce any determination on it, as whatever might have been the negligence of the attorney with respect to his certificate, the client ought not to suffer. The present rule must therefore be discharged.

Rule discharged.—*Hillary v. Hungate*, Bart. M. T. 1834. K. B. P. C.

### Common Pleas.

MARRIED WOMAN.—FORM OF ACKNOWLEDGMENT.—AMENDMENT.—INFANT TRUSTEE.

*Under special circumstances the Court of Common Pleas will alter the form of acknowledgment by married women, prescribed by the 3 & 4 W. 4, c. 74.*

This was an application for an order upon certain commissioners, appointed under the 3 & 4 W. 4, c. 74, for taking the acknowledgments of married women to deeds, in order to remove a difficulty which had arisen in the present case. By the 11 G. 4 & 1 W. 4, c. 60, s. 6, it is enacted, "that where any person seized or possessed of any land upon any trust, or by way of mortgage, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the Court of Chancery, to convey the same to such person, and in such manner, as the said Court shall think proper; and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been, at the time of making or executing the same, of the age of twenty-one years." In the next section the same powers were given to the Court of Chancery of the County Palatine of Lancaster, as to land within its jurisdiction. That Court ordered accordingly two ladies, who were infant trustees, to convey to certain other trustees named by the Court. It happened, however, that one of them, before the conveyance, married. The commissioners, before whom she came to make acknowledgment, pursuant to the 3 & 4 W. 4, c. 74, refused to take it, as by that act they must certify, that a married woman coming before them to acknowledge the deed, is at the time "of full age and competent understanding." In the same section, however, the Court of Common Pleas has authority to alter the certificate.

*Tindal, C. J.*—The better course will be to make the change in the form of the certificate, in an order relative to this case alone, rather

than in the general form of the certificate. An order may be taken for the commissioners to omit the words, "full age and" in their certificate in this case.

Order accordingly.—*Re Sarah Luke, the wife of G. Luke, an infant*, M. T. 1834. C. P.

### Exchequer of Pleas.

#### FOREIGN JUDGMENT.—APPEAL.—STAYING EXECUTION.

*The plaintiff obtained a verdict and judgment on a foreign judgment, and the plaintiff was allowed to charge the defendant in execution, although an appeal in a foreign court was still pending, but not proceeded with.*

The plaintiff in this case obtained a verdict, and signed judgment, on the judgment of a French court; but against the judgment on which the action was brought, an appeal was lodged in the Court of Cassation in France, previous to bringing the action on the judgment. That appeal was still pending. A rule for charging the defendant in execution having been obtained, an application was made for staying the execution, or discharging the defendant, on the ground of the pendency of the appeal in the foreign court.

*Per Curiam.*—We are of opinion that this motion is premature. It will be sufficiently early to apply when the judgment of the French court is reversed; at present the judgment of that court is good till it is set aside. The appeal was brought previous to commencing the present action, but no proceedings appear to have been taken on it. The reason given is that the defendant being arrested in this country on the judgment, could not proceed with the appeal. That, however, makes no difference. The appeal should have been proceeded with.

Rule refused.—*Aliren v. Furnival*, M. T. 1834. Excheq.

#### IMPARLANCES.—UNIFORMITY OF PROCESS ACT.

*The Uniformity of Process Act abolished imparlances.*

On shewing cause against a rule for setting aside the judgment signed in this case, on the ground of irregularity, it appeared that the defendant had been duly served on the 11th of October, with a writ of summons. The defendant not appearing according to the exigency of the writ, an appearance was entered for him by the plaintiff, pursuant to the statute. On the 25th the plaintiff filed his declaration, and gave notice to plead in four days. The defendant did not plead, and on the 31st judgment was signed for want of a plea. A rule nisi was afterwards obtained for setting aside this judgment, on the ground of its being signed too soon, as it was alleged the defendant was entitled to an imparlance. In shewing cause against this rule it was contended, that as the 11th section of the 2 & 3 W. 4, c.

38 (the Uniformity of Process Act), empowered the plaintiff to proceed to judgment and execution during vacation, with certain exceptions mentioned in the provisoes of the section, at the expiration of eight days from the service or execution of the process, imparlances were altogether abolished.

In support of the rule, it was contended, on the authority of *Freen v. Chaplin* (2 Dowl. R. C. 523), that imparlances were not yet abolished, but still had existence.

*Cur. ad. vult.*

*Per Curiam.*—We have consulted the judges of the other Courts, and we are all of opinion that imparlances are now altogether abolished by the operation of the Uniformity of Process Act. With respect to the decision of *Freen v. Chaplin*, we have conferred with the learned judge who decided it, and he acknowledges Mr. Dowling's report of it to be perfectly correct; but he inclines now to alter his opinion, and therefore concurs with the other judges. The present rule must, therefore, be discharged, but without costs.

Rule discharged, without costs.—*Nurse v. Greting*, M. T. 1834. Excheq.

### COMMON PLEAS.—NEW RULE.

#### ENTERING CERTIFICATES AND TERMAGE FEES.

*Michaelmas Term, 5 W. 4.*

*Tuesday, 25th November.*

WHEREAS inconvenience hath arisen by reason of the attorneys practising in this Court not having made any entry of their admission as attorneys, and of the taking out of their annual certificates, in the book kept for that purpose by the Clerk of the Warrants: And whereas by the custom and rules of this Court every attorney ought to pay to the Clerk of the Warrants or his deputy his termage fees, being 8d. in every term, one moiety of which forms the fund for the support of the Criers of this Court: And whereas complaint has been made to us that of late such payments have been much neglected, it is ordered that every person admitted an attorney of this Court, not having already entered such his admission, and also every attorney hereafter to be admitted, shall forthwith enter his admission, and shall cause his annual certificate to be on or before the first day of Easter Term in every year entered with the said Clerk of the Warrants, which entries shall, in all cases where the annual certificate has been already entered in one of the Courts, be made without fee or reward, and shall at the same time pay and discharge all his arrears of termage fees.

N. C. TINDAL.

S. GASELEE.

J. VAUGHAN.

J. B. BOSANQUET.

## ANSWERS TO QUERIES.

## Common Law.

LAW AMENDMENT ACT.—INTEREST. VOL. 8, P. 496.

If I do not misunderstand this section, a jury may give interest in certain cases, in which previously to the passing of this statute they could not do so; and that the effect of the proviso is to preserve to parties the right to interest without the intervention of a jury, in all cases in which it was previously payable by law; and therefore I infer, that in the case alluded to, interest may be charged, but cannot be enforced without going before a jury, who will have the opportunity of giving or refusing it at their discretion, on a consideration of all the circumstances of the case.

X. Y.

## Law of Property and Conveyancing.

SETTLEMENT. VOL. 8, P. 495.

*Bradstock v. Scovell*, Cro. Car. 434, appears to be a direct authority, that where an eldest son levied a fine of an estate tail, which was then vested in his mother, and died in her lifetime, so that the estate never descended on him, his younger brother was not barred by it; *contra*, if the eldest had survived her. *Burhener's case*, 8 Rep. 88 a.

X. Y.

LEASE—INSURANCE. P. 48.

The lessor cannot maintain ejectment on the ground of a breach of covenant, unless authorised by the proviso for re-entry: having contracted for a power of distress, the law will confine his remedy accordingly. Ejectment lies for a breach of a condition, but not of covenant. *Doe d. Watson v. Phillips*, 2 Bing. 13.

X. Y.

## QUERIES.

## Common Law.

TITLE.—REMEDY.

*A.* being seised of certain freehold premises, mortgages them to *B.* for a term, and afterwards devises them to *C.* in fee. *C.* enters into possession, and shortly afterwards dies, as was at first supposed intestate, leaving two sons, Thomas and John. Thomas, the heir, enters into possession, and soon after, by indentures of lease and release, containing the usual covenants for title, conveys the premises to *B.*, the mortgagee in fee, and dies intestate, leaving his next brother, John, him surviving. It has subsequently been discovered that *C.* left a will, devising the premises to his second son John, who is now the heir of his eldest brother Thomas. John threatens to commence proceedings against *B.* for recovery of the possession of the land. Can *B.* successfully resist such proceedings, and on what grounds?

W. B.

CONVEYANCE.—FORGERY.

*A.* purchased a house and premises of *B.* for a valuable consideration. On the treaty for the purchase, *B.* represented himself to be the owner, and forwarded the abstract of title to the solicitors of *A.* in the usual manner. No objection whatever was raised to it. The deeds were examined substantiating the abstract, the conveyance prepared and executed by all parties, and the consideration money paid over. No appearance of fraud presented itself to the purchaser or his solicitor, nor was there any circumstance calculated to raise the least suspicion as to the validity of the title or the ownership of the property. After a lapse of about two years, *C.*, who had been on the continent, discovered that the property had been sold by *B.*, who had no title whatever, and who in fact had forged the signature of *C.* (the legal owner), being at the time in possession of the whole of the title deeds. Can *C.* compel *A.*, by bill in Chancery, or otherwise, to re-convey the property in question to *C.*? or what remedy has *C.* to recover the property back?

R. H.

## THE EDITOR'S LETTER BOX.

The Legal Almanack and Remembrancer for 1835, will be published on Tuesday next, the 23d instant. It contains Lists of the Judges and Officers of the Superior Courts, a Calendar, and List of Holidays, Terms and Returns, Law Offices and Times of Attendance, Quarter Sessions, Local Courts, Magistrates and Law Officers of the City of London, Police Magistrates and Commissioners, Incorporated Law Society, Officers of the Houses of Parliament, Inns of Court, Circuits of the Judges, the Bar, *ad valorem* Stamps, Tables, &c.

We have endeavoured to meet the wishes of the intended Subscribers to the Almanack, though it has not been practicable within the necessary limits of such a publication to comprise all that has been suggested.

The compilation of the lists of barristers has been attended with considerable trouble and labor. By the permission of the Benchers of the Inns of Court, the names and dates have been correctly ascertained from the books of admission to the bar; and in order to include every member the search has been extended back for fifty years, and upwards.

The Communications of W. Y. C. and X. D. are acceptable.

The Queries and Answers of E.; Gradus; T. T. T.; Lector; and J. A. M., have been received.

The notices of intended New Books will be given in the Supplement for the present month.

The Letter on Attorneys' Certificate Duty shall be inserted.

The New Rule of the Common Pleas was omitted last week by mistake. We thank a correspondent for the trouble he has taken.

# The Legal Observer.

Vol. IX. SATURDAY, DECEMBER 27, 1834. No. CCXLIV.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agimus.

HORAT.

## THE LATE LEGAL APPOINTMENTS

We cannot resist the pleasure of again adverting to the late legal appointments.

The Judges are these :

Lord **LYNDHURST**, Lord Chancellor.

Sir **JAMES SCARLETT**, Chief Baron.

Sir **E. B. SUGDEN**, Lord Chancellor of Ireland.

We are happy to see that the qualifications of these eminent persons as lawyers are universally admitted ; and it cannot be doubted, that for the public weal this is the great requisite. We repeat, that their success is an important and encouraging lesson to the profession, more particularly to the younger members of it. It should teach all, that he who steadily pursues his professional duties, who devotes himself to his calling, and maintains an unblemished reputation to the end, is in the right track. These are mere truisms ; but we have not always illustrations of them at hand, and we are ever happy to enforce them in these pages. Indeed it cannot be too often repeated, that in the profession of the law the great prizes are not only open to the competition of the most humble individuals in the state, but are, in fact, in most instances carried off by them. There are some glorious exceptions ; but in general he who is possessed of hereditary distinction soon sinks at the regular drudgery of the law, and if he can secure some place or post, retires satisfied with his achievements. No greater bar to eminent success in the law exists, than an easy competency — although some have overcome even this ; but as a general rule, at the bar, as in a Dutch prison, he who will not work for his life soon

disappears ; it is therefore only the working men who steadily pursue their course without seeking to arrive at it by any short cut, who need never despair.

The law officers are also eminent men. When we last went to press, which we necessarily do in the middle of the week, Mr. Pemberton had the refusal of the Solicitorship. Since that time, be the reason what it may, he has declined the offer, and Mr. Rollett has accepted it. The appointments therefore stand thus :

Attorney-General, Mr. F. POLLOCK.

Solicitor-General, Mr. FOLLETT.

These appointments are also well deserved ; but as these gentlemen are still at the bar, we say nothing more about them.

Lord Lyndhurst has taken the opportunity of his re-appointment to the office of Chancellor to make an extensive creation of King's Counsel. Some persons have objected to any distinction of rank at the bar, except that of seniority ; but however this may be, we have always been of opinion that when a barrister has enjoyed a certain extent of practice behind the bar, and attained the proper standing, if he be willing to run the chance of success as a leader, he should have the opportunity given him. Many must of course be injured by such a step ; but then they can have no one to blame but themselves. Many persons, on the contrary, are greatly injured by not having this step conferred on them. If any change in the matter be necessary, it is the rendering this rank independent of the mere caprice of a Lord Chancellor, although we are not prepared with any plan not open to greater disadvantages than the present. Lord Lyndhurst has certainly not been a niggard of these honours, either at this time or when

he before held the great seal. The following are, we believe, all the gentlemen who are to receive this honour before the next term:—

IN THE COURTS OF EQUITY.

Mr. Barber, Mr. Wakefield, Mr. Temple, Mr. Skirrow, Mr. Spence, Mr. Jacob, Mr. Kindersley, and Mr. Wigram.

IN THE PRIVY COUNCIL.

Mr. Burge and Mr. Miller.

IN THE COURTS OF COMMON LAW.

The Solicitor-General, Mr. Platt, and Mr. Kelly.

CHANGES MADE IN THE LAW  
DURING THE LAST SESSION OF  
PARLIAMENT, 1834.

No. XV.

THE ACT TO AMEND THE FRIENDLY SOCIETY  
ACT.

4 & 5 W. 4, c. 40.

By the 10 G. 4, c. 56, § 6, it is enacted, that no rules relating to friendly societies should be allowed, unless it should appear to the justices to whom the same are tendered that the tables of the payment to be made by the members, and of the benefits to be received by them, might be adopted with safety to all parties concerned; and by § 20, that the executors, administrators, or assignees of bankrupts or insolvents should pay money due to friendly societies before any other debts; and by § 30, that the funds of any friendly society might be subscribed into a savings bank; and by § 34, that the returns of the rate of sickness and mortality were to be made to the clerk of the peace; and by § 35, that the clerks of the peace were to transmit such returns to the secretary of state; and by § 36, that the friendly society refusing or neglecting to make such return, should cease to be entitled to the privileges of the said act. By the present act, the above section and parts of sections of the act are repealed; and it is enacted (§ 1), that any number of persons in Great Britain and Ireland may form themselves into and to establish a society, under the provisions of the said act, for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations, or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal: provided always, that when the rules of any society provide for relief in any other case than that of sickness, infancy, advanced age, widowhood, or other natural state or contingency as aforesaid, the contributions for such other purpose shall be kept separate and distinct, or the charges defrayed by extra

subscriptions of the members at the time such contingencies take place. (§ 2.)

By the present act (§ 3.) also, so much of § 4 of the 10 G. 4, c. 56, as relates to the rules of friendly societies being transmitted to the barrister or advocate, and deposited with the clerk of the peace and certified by him, as well as so much of § 7 as relates to alterations of rules being certified by the clerk of the peace, and that no rule or alteration or amendment should be binding until confirmed by the justices, and filed under the said act, are repealed.

Two transcripts of all rules made in pursuance of the said recited act or this act, signed by three members, and countersigned by the clerk or secretary, shall be submitted, in England and Wales and Berwick-upon-Tweed, to the barrister at law for the time being appointed to certify the rules of saving banks, and in Scotland to the lord advocate or any deputy appointed by him for that purpose, and in Ireland to such barrister as may be appointed by his Majesty's attorney general in Ireland, for the purpose of ascertaining whether the said rules of such society are calculated to carry into effect the intention of the parties framing such rules; and the said barrister or advocate shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law and to the provisions of the said recited act and this act, or point out in what part or parts the said rules are repugnant thereto; and that the barrister or advocate, for advising as aforesaid, and perusing the rules, or alterations or amendments of the rules, of each respective society, and giving such certificates as aforesaid, shall demand no further fee than that specified in the said recited act; and one of such transcripts, when certified by the said barrister or advocate, shall be returned to the society, and the other of such transcripts shall be transmitted by such barrister or advocate to the clerk of the peace for the county wherein such society shall be formed, and by him laid before the justices for such county at the general quarter sessions, or adjournment thereof, held next after the time when such transcript shall have been so certified and transmitted to him as aforesaid; and the justices are authorized, without motion, to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without fee or reward; and all rules, alterations and amendments thereof, from the time when the same shall be certified by the said barrister or advocate, shall be binding on the several members and officers of the said society, and all other persons having interest therein. (§ 4.)

The barrister shall be entitled to no further fee for any alteration or amendment of any rules upon which one fee has been already paid to the said barrister within the period of three years: and if any rules, alterations or amendments, are sent to such barrister or

advocate, accompanied with an affidavit of being a copy of any rules, or alterations or amendments of the rules, of any other society, which shall have been already enrolled under the provisions of the said recited act or this act, the said barrister or advocate shall certify and return the same as aforesaid, without being entitled to any fee for such certificate. (§ 5.)

The returns of the rate of sickness and mortality according to the form prescribed in the schedule appended to the said recited act shall be transmitted at the periods therein mentioned to the barrister or advocate by whom the rules of the society may have been certified, and shall by such barrister or advocate be transmitted to the secretary of state, for the purposes in the said recited act provided. (§ 6.)

When the rules of any society provide for a reference to arbitrators of any matter in dispute, and it shall appear to any justice of the peace, on the complaint on oath of a member of any such society, or of any person claiming on account of such member, that application has been made to such society, or the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not within forty days been complied with, or that the arbitrators have neglected or refused to make any award, it shall and may be lawful for such justice to summon the trustee or other officer of the society, and for any two justices to hear and determine the matter in dispute, in the same manner as if the rules of the said society had directed that any matter in dispute as aforesaid should be decided by justices of the peace, any thing in the said recited act contained to the contrary notwithstanding. (§ 7.)

In case any member of a friendly society established under the said recited act or this act, shall have been expelled from such society and the arbitrators or justices, as the case may be, shall award or order that he or she shall be reinstated, such arbitrators or justices may award or order, in default of such reinstatement, to the member so expelled, such a sum of money as to such arbitrators or justices may seem just and reasonable; which said sum of money, if not paid, shall be recoverable from the said society, or the treasurer or other officer, in the same way as any money awarded by arbitrators is recoverable under the said recited act. (§ 8.)

Any society established under the authority of the said recited act or this act, from time to time, may subscribe the whole or any part of the funds of such society into the funds of any institution which shall have taken the benefit of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Savings Banks," subject to the provisions in that act contained relating to friendly societies, except so much thereof as restricts the amount allowed to be invested, which restriction as to the amount allowed to be invested by any friendly society,

is hereby repealed: provided always, that it shall not be necessary for the trustees of any savings bank to enrol at the sessions any alteration in the rules of such institution which may be occasioned by the provision herein contained. (§ 9.)

On the trial of any action, indictment, or other proceeding respecting the property of any society enrolled under the authority of the said recited act or this act, or in any proceedings before any justice of the peace, any member of such society shall be a competent witness, and shall not be objected to on account of any interests he may have as such member in the result of such action, indictment, or other proceeding.

No fee shall be charged to any member of any friendly society whatever for any oath or oaths which he may be legally required to make before a magistrate or magistrates in order to obtain the payment of his sick pay or allowance; any law, usage, rule, or custom to the contrary notwithstanding. (§ 11.)

If any person already appointed, or who may hereafter be appointed to any office in a society established under the said recited act or this act, and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his said office or employment, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, or have any execution or attachment or other process issued, or action or diligence raised, against his lands, goods, chattels, or effects, or property or estate, heritable or moveable, or make any assignment, disposition, assignment, or other conveyance thereof, for the benefit of his creditors, his heirs, executors, administrators, or assignees, or other persons having legal right, or the sheriff or other officer executing such process, or the party using such action or diligence, shall, within forty days after demand made in writing by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver and pay over all monies and other things belonging to such society, to such person as such society or committee shall appoint, and shall pay, out of the estates, assets, or effects, heritable or moveable, of such person, all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied, or before the money directed to be levied by such process as aforesaid, or which may be recovered or recoverable under such diligence, is paid over to the party issuing such process or using such diligence; and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment and discharge thereof accordingly. (§ 12.)

Letters to and from barristers and advocate to be free of postage. (§ 13.)

Provisions of former statutes to continue in force as to societies established under them

until they shall conform to the provisions of 10 Geo. 4. c. 55, as hereby amended.

Sec. 15 relates to the construction of words in the act.

## CONSTRUCTION OF THE UNIFORMITY OF PROCESS ACT.

### No. I.

#### SUMMONS.

SINCE the passing of the 1 & 2 W. 4. c. 39, (The Uniformity of Process Act) various decisions have been pronounced by the Courts as to the construction which is to be put upon its provisions. It may not be unimportant to the profession, that those decisions should be collected, so that a succinct view of the practice on that act may be obtained. We propose in the present article to make such a collection, with regard to the writ of summons. It is to be observed, that this writ is now considered as the commencement of the action, and time is now reckoned from the day when it is sued out, and not from the day when it is served. Therefore, where the plaintiff took an assignment of the bail bond on the 10th, and issued a writ against the bail on the same day, the bail bond not being forfeited till the 11th, but the writ against the bail was not served till the 11th, the Court set aside the proceedings on the bail bond as having been commenced too early. *Alston v. Underhill*, 2 Dowl. Prac. Cas. 26. In the same case it was also held that the rules of Court issued before the Uniformity of Process Act passed, do not apply to proceedings under that act. In *Storr v. Bowles* (1 Dowl. Prac. Cas. 516) it was also held that the act applies only to the commencement of actions, and not their continuance.

It will be observed, that this writ is directed to the defendant in this form. "To C. D., of &c. in the county of ———." Therein, therefore, the street, place, or county, wherein "the residence or supposed residence of the party, defendant, or wherein the defendant shall be, or shall be supposed to be, must be described."

In *Jelks v. Fry* (3 Dowl. Prac. Cas. 37,) it was held that "Yorkshire" is a good description of a defendant's residence as far as the county is concerned, although he resides at Kingston upon Hull, if from the locality of the defendant's residence it may be supposed that he resides in the county of Yorkshire. There the defendant resided at a house within twenty yards of the bound-

dary line of the county of York, in a street, which though having a different name from that in which the defendant lived, was a continuation of it. It will be observed that the same exactness is not necessary in describing the defendant's residence where a *capias* has issued. When we come to speak of the latter writ, the decisions will be pointed out.

This act, it is now decided, does not interfere with the privilege of an attorney to retain his *venue* in Middlesex. *Partington v. Woodcock*, 2 Dowl. Prac. Cas. 550.

As a general rule, the form both of this and the other writs given by this act, must be strictly pursued. With respect to this strictness, the rule laid down by the Court in *Hodgkinson v. Hodgkinson*, 2 Dowl. Prac. Cas. 535, is this: "That the omission of a letter is immaterial if it is not productive of a variation, either in sound or sense; but if it does, it is material." This principle appears to have been acted upon in all the Courts, and with reference to all the writs. So far as the decisions may apply to the writ of summons in particular, or in common with those of the *capias distringas*, we shall here insert them.

In the case of *Smith v. Crump*, 1 Dowl. Prac. Cas. 519; 5 L. O. 384, S. C., it was held that the summons was irregular in not stating that the plaintiff was the person who would enter an appearance on default by the defendant. Where the summons was to answer the plaintiff in an action of trespass on the case on promises, the Court of Exchequer held the writ irregular. But in *Engleheart v. Eyre and another*, 2 Dowl. Prac. Cas. 145; 6 L. O. 138, S. C., which was an action against several; the writ stated that the plaintiff "may cause an appearance to be entered for 'you,' without adding 'each of you,' was held by *Patterson, J.* to be regular, for the word 'you,' must be taken as distributively applying to each defendant.

It is to be observed, that if the name of one county be substituted for another in this writ without re-sealing, the Court of Common Pleas will set it aside, though without costs, notwithstanding the defendant has obtained an order to stay proceedings on payment of debt and costs. *Siggerson v. Sasseen*, 2 Dowl. Prac. Cas. 745. But the omission of the name of the chief clerk of the King's Bench on this writ, is not an irregularity, *Wilson v. Joy*, 2 Dowl. Prac. Cas. 182; nor need the filacer sign the writ, if it had the seal of the Court impressed upon it. *Burt v. Jackson*, 2

Dowl. Prac. Cas. 747. With respect to the form of action, it was held in *Pell v. Jackson*, 2 Dowl. Prac. Cas. 445, that "libel" was a sufficient description of the form in such a writ; and in *Davies v. Parker*, lb. 587, "slander" was held to suffice.

With regard to the *teste* and date of writs, required by sect. 12 of the act, it was held by the Court of Exchequer, that indorsing on the writ the day of its being issued, is not sufficient.

By sect. 12, the name and place of abode of the attorney suing out the writ, is required to be stated, and on this it has been held that his name is stated sufficiently to be a compliance with the statute if the name of the firm is indorsed. *Engleheart v. Eyre and another*, 2 Dowl. Prac. Cas. 145; 6 L. O. 138, S. C.; *Constable v. Johnson*, 1 Dowl. Prac. Cas. 598. In the former case it was also held that "Grays Inn, London," was a sufficient description of the defendant's place of abode, although no part of Grays Inn was in the city of London. Next as to the indorsement of the amount of the debt and costs pursuant to 2 Reg. Gen. H. T. 1832, extended by the 5 Reg. Gen. M. T. 3 W. 4. In *Curwin v. Mossely*, 1 Dowl. Prac. Cas. 432; 4 L. O. 301, S. C.; it was held that if the indorsement were omitted, and the defendant sought to avail himself of the defect, it must be shewn by affidavit, that the plaintiff's claim was a debt. In *Rowland v. Dukeysse and others*, 2 Dowl. Prac. Cas. 832, and in a subsequent case, it was held, that in an action on a bail bond or a *replevin* bond, it is not necessary to indorse the amount of debt and costs claimed by the plaintiff. *Ryley v. Boissomas*, 1 Dowl. Prac. Cas. 383: the rule was held to be compulsory and not merely directory. In *Tomkins v. Chilcote*, 2 Dowl. Prac. Cas. 187; 6 L. O. 333, S. C.; it was held that the rule applied also to process against attorneys: where, however, the party seeks to take advantage of the omission, he must apply within a reasonable time, and therefore, eighteen days after the service was held to be unreasonable, if the defendant might have moved earlier. *Wright v. Warren*, 2 Dowl. Prac. Cas. 724. If the service is regular, but the writ is irregular, the application ought to be to set aside the writ; or in case the irregularity being merely in the copy, it may be to set aside the copy itself. *Hasker v. Jarman*, 1 Dowl. Prac. Cas. 654; *Cokel v. Watson*, 3 Tyr. 238; and *Barder v. Levi*, 3 Dowl. Prac. Cas. 150.

The Court of Exchequer however refused to set aside the service, it appearing very doubtful whether or not a service had been effected.

In our next we shall consider the writ of summons against Members of Parliament, and the Distringas.

## LAW OF ATTORNEYS.

### No. XXIV.

#### DEPOSIT OF DEEDS.

The following case is worthy of attention :

*Assumpsit* upon articles of agreement made between the plaintiff and the defendant, in 1832, whereby, after reciting that deeds belonging to the defendant had been deposited with the plaintiff and were lost, the plaintiff agreed to pay 100*l*. in consequence of the deeds having been mislaid; and the defendant agreed to return the 100*l*. and interest, if it should afterwards be proved that the deeds had not been mislaid by the plaintiff, or by any person employed by him. Breach, that the defendant had not returned the 100*l*. and interest upon proof that the deeds had not been mislaid by the plaintiff, or any one employed by him. Plea, *non-assumpsit*. At the trial before *Dennan, C. J.*, at the Warwickshire Spring Assizes, 1833, it appeared that in 1807, the plaintiff, as attorney for the defendant, purchased property for him, and the deeds remained with the plaintiff. In the same year the defendant, wishing to raise money, the sum of 200*l*. was advanced by a party to the defendant, upon receiving from the plaintiff the defendant's bond and the deeds, which were deposited with him as an additional security. In 1822, when the deeds were enquired for, the plaintiff had forgotten that they had been deposited as a security for the money borrowed when the above agreement was entered into. The learned Chief Justice left it to the jury to say whether the deeds were so deposited with the knowledge of the defendant, and directed them, that if they thought that the defendant was informed that the deeds were to be handed over, they should find for the plaintiff, otherwise for the defendant; for that the plaintiff, an attorney, ought to have been able to inform the defendant where the deeds were deposited. The jury found for the defendant.

*Adams, Sergt.* now moved for a new trial. The deeds cannot be said to have been mislaid by the plaintiff in this case; for it may be that circumstances required that in order to raise the money for the defendant, as the plaintiff had been directed, he should deposit the deeds with the lender as an additional security; and if such was the case, the plaintiff did no more than his duty; whereas *mislaying* implies negligence.

*Dennan, C. J.*, said, that the Court was of opinion that the deeds must, under the cir-



cumstances, he considered as having been mislaid by the plaintiff; that it appearing that his client was not aware of the deeds having been deposited with the party who had advanced the 200*l.*, the plaintiff ought to have been able to inform him where he might find his deeds when he required them.

Rule refused.—*Wilmott v. Elkington*, 1 N. & M. 749.

## DOUBTS ON THE NEW STATUTES.

### APPORTIONMENT OF RENTS.—EXCHANGE OF COMMON FIELD LANDS.

Sir,

I have followed the advice of your correspondent M. (*ante*, p. 101), and have given the recent act, for the apportionment of rents and other periodical payments, and for facilitating exchanges of common field land, another half hour's perusal, the result of which is, that I am more than confirmed in the opinion of their merits I have already expressed.

With respect to the first-mentioned act, your correspondent does not appear to comprehend the nature of my objection as to most of the payments specified; neither right, nor remedy, existed previous to the act; but whether either did or did not, is immaterial to the question between us; my objection being, that, construing the act literally the remedy is given, or at least is to be exercised, on a day which can never arrive, the act declaring, that the apportioned part of the rent, annuity, or other payment shall be recoverable "when the entire portion of which such apportioned part shall form part, shall become due and payable, *and not before*."

Your correspondent seems to overlook, that I was not speaking of a continuing payment, but of a determinable one; and in illustration I put this case: *A.*, is entitled to an annuity for the life of *B.*, payable quarterly, without any provision for *B.*'s dying during the quarter. Now, suppose the annuity to be payable on the four usual days of payment, and *B.* to die between Michaelmas and Christmas. The annuity of course determined on the day of *B.*'s death: and we will assume that under the act *A.* is entitled to a proportionate part of the annuity up to, and inclusive of the day of *B.*'s death. Such apportioned part however is not to be recoverable until—when? the act says, when the entire portion, of which it is a part shall become due and payable. The entire portion would have become payable at Christmas, if the annuity had not become determined by *B.*'s death; but the annuity having determined on *B.*'s death, the "*entire portion*," that is, the entire quarter's payment from Michaelmas to Christmas, never will become due and payable: when, then, is it to be recoverable?—At Christmas? if so, some such words as "when the entire portion would have become due and payable in case such rent, annuity, or other payment had not become determined," should have been inserted.

So far the objection may be thought more

formal than substantial. But it appears to me to be a question, whether the act does really extend to a determinate payment, like the annuity supposed. The language of the former part of the section, which gives the right, is applicable to continuing and determinable payments; the language of the latter part, which relates to the recovery, is applicable only to continuing payments; this inconsistency raises a doubt; for as the latter part of the section appears to have been intended to apply to all that was intended to be comprised in the former part; it may be, not without reason, contended, that what is not comprehended in the latter part is not comprehended in the former. At all events, I would ask your Correspondent whether in the case supposed, it is so clear, so very clear, "*that it could not be clearer*," that *A.* is entitled to a proportionate part of the annuity up to *B.*'s death; and if he is, on what day he may proceed for its recovery?

The act in question may be concise; but conciseness and perspicuity are not always compatible; and in this instance the latter may have been sacrificed to the former.

With respect to the act for facilitating exchanges of common field land, I agree with M. in thinking, that the better construction restricts the exchange to lands lying in the same field, or in the same or an adjoining parish, and I expressed as much in my former letter; and whether it be so or not, will probably matter very little in practice, as few I imagine will venture on an exchange unless the lands do lie in the same field or parish, or an adjoining one. But that such is the grammatical construction, I must deny; the sentence runs thus, "In lieu of, and in exchange for any other land, whether lying in the same or any other common field, or for any enclosed land lying in the same or any adjoining parish." Now will your correspondent point out any rule of grammar by which the words "*lying, in the same or any adjoining parish*," may be taken in connection with the common field land.

It is to be observed, that my object was not so much to discuss the effect of these statutes, as to point out the marks of want of skill, or care, in their preparation; and as another correspondent has addressed you respecting one of them, it appears that I am not singular in the view I take. The latter statute I take the liberty of again calling a blundering performance; but having already occupied too much of your room, I will, with your permission, make some further remarks to justify my censure next week.

J. W. S.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

### MR. COLERIDGE'S INTRODUCTORY LECTURE ON EQUITY.

Mr. Coleridge commenced his lecture by noticing the present state of the profession, and observed that the stability and advance-

ment of the law, depended on the conduct of its professors of all degrees. Formerly, the law, as a profession, needed no support from the exertions of individuals, but now it had come to that pass, that unless lawyers themselves made it a duty to speak and act as members of a liberal profession—anxious to strengthen the foundation of our system of jurisprudence, and exalt the character of those to whom its administration was confided—the profession would infallibly decline both in rank and importance. They were not driving a trade for profit merely, but the time was come when, if the legal profession was to retain its rank, more than mere dexterity in the practitioner, or even integrity in the individual, was needed.

He stated that the only valuable distinction between a profession and a trade was, that the former is grounded on science, and that were it necessary or practicable for a trade to be carried on upon scientific principles, then it would be worthily dignified with the name of a profession. The three sciences of Law, Physic, and Divinity, comprehend within their range every thing that is necessary for the support, regulation, and well-being of society. First, the science of the law tends to the regulation of all the proper duties between man and man, and enables us to take advantage of the vast improvements effected in our social condition by the blessings of civilization; creating and securing the condition on which society alone existed; preserving the smallest as well as the most important interests of individuals; checking violence, and protecting property. Divinity, aided by ethics and philosophy, furnishes principles and declares rules beyond the prescriptions of social law, and transcending them in force of obligation and sublimity of object,—dealing, therefore, immediately with man as an individual, and only secondarily and derivatively with society at large. And thirdly, Physic, by leading us to the study of nature, and of the human body, as the organ by and in which we have our communion with, and control over, nature, links together the two former sciences of Law and Divinity, upon which, nevertheless, itself rests for support and nourishment, and directly regards the relations, the duties, and the capabilities of man, both as a citizen and also as an individual.

He was, he said, particularly desirous of awakening the junior members of the profession to a sense of the importance of the consideration, that the profession of the law is essentially scientific; for it is only a liberal, because it is a scientific profession, and

in order to preserve the liberal character, it is absolutely necessary that the scientific character should be preserved also. There were two positions which he considered it necessary always to bear in mind—the first of which was, that the profession of the law ought to live in the science; and the second, that the science ought to live in the profession.

The first was of more immediate importance, although, unless the second was kept constantly in recollection, the first would be speedily annihilated. By his first position he meant, that those who belonged, or intended to belong, to the profession, ought to lay a deep foundation of principles upon which, and upon which alone, ought they to attempt to build up a code of mere practice; and that to enforce or countenance a mode of legal education which has not a sound and catholic view of the Law, as Law, for its basis, is to degrade the profession of the law at once and for ever into a mere art or trade.

Every one must have observed the strong disposition evinced by those engaged in trading or commercial pursuits, to struggle upwards, and so to raise the character of their calling, so as to convert it into that of a science; and unless the same laudable anxiety were manifested by the profession to preserve, at all events, their present station, they would soon find their once liberal profession converted into an illiberal trade.

The object of a municipal or trading corporation, was to preserve their rights and privileges—the few were elected by the many. The object of a scientific college was to create a class of superior intelligence and learning; to throw new light on the means of human improvement. They were appointed by a higher rather than a lower class. It afforded the security of a higher responsibility, by excluding those who were unfit and expelling those who were unworthy.

Every one must be aware of the notion openly expressed by some, and secretly entertained by more of our profession, that much reading and large views in the theory of the law tend to spoil the practising lawyer;—or at least, that a man who aims at comprehending the law as a science, very commonly forgets that a certain familiarity with the art is necessary to its effectual profession. Now, if by this is only meant, that a lawyer unacquainted with the rules of practice of the Courts, cannot be a safe adviser to his client, it is a position so very true as to be a truism. But in fact, more is meant here than “meets the ear;” and the shar-

which this vague notion or feeling does actually assume in the result, with a great many minds, is that of a rooted *prejudice* against educating young men, whether as Solicitors or for the Bar, upon any large and liberal principle; and the mode in which this prejudice operates is by absorbing the attention in the acquirement of forms and routine practice, and by discountenancing, or what comes to the same thing, by not encouraging, the student in the pursuit and mastery of the history and principles of the science, of which those forms are merely the tools and dead instruments, — worse than useless, unless directed by the light, and well understood to be the repositories of scientific principle. Against this prejudice, whenever and in whatever shape or modification it exists, the most earnest and uncompromising efforts of every true well-wisher to the honor and stability of the law as a profession, ought to be directed. For surely it can hardly be necessary to argue that such an opinion as this was far from being truly warranted by experience, as it can be considered to be founded on reason.

We find that in all other sciences the action so falsely entertained with regard to law, operates in an inverse ratio. Is that man the best physician or surgeon who has confined himself all his life to mere practice? On the contrary, many of our profoundest physiologists are the best operators; and one he could name more especially, who was at once an ornament and a safeguard at the hospital, where his services were invaluable.

In divinity it is sometimes found that the ministrations of a well-educated clergyman are charged as being unfit for the service of a humble and ill-informed flock; but every reflecting man must be convinced that such an objection is wholly groundless, for there could be no good reason why the clergyman who ministers in a cottage or a hovel, should not with equal propriety perform his duties in the mansions of the affluent.

It could not be denied that superior reputations in the law had been formed almost wholly from practice, and that there were some still existing, and he deeply regretted the circumstance. He sincerely wished there were none, for they were too apt to be looked upon as examples that law might be practised without science, and, viewed in this light, could not fail to be most mischievous in their consequences. A course of study which should separate the practice from the principles of the law would infallibly destroy it as a science.

The student who has in the first instance imbued his mind with a knowledge of the general principles of our laws, will soon become master of the rules connecting principles with practice — will observe their logical union, and understand their use, and the reason of their having been formed. By degrees he is led on to practice; and having already learnt its fundamental principles, he will readily acquire the secondary rules, and see their applicability. Each case will find its legitimate place in the system. Rules drawn from general principles will seem obvious and necessary. They will suggest themselves with ease. He will readily appreciate the tendency of every fact submitted to his consideration, and he will ultimately acquire a complete mastery over his books. With rules thus impressed on his memory, there is as little chance of his forgetting them as there is of forgetting how to swim when the art is once learnt.

The Lecturer then proceeded to pass an eloquent eulogium upon the founders of the Law Institution. A few years ago, no one, however sanguine in his hopes of improvement, would have ventured to hope that such a scene would ever be witnessed as that which he then saw before him. He did not profess to be, if he might use the word, a *possimist*, nor was he ever an *optimist*; but he might fairly hope, through the means of their valuable institution, to be a *meliorist*. He considered the establishment of the Law Institution as the greatest advance which had been made towards the improvement of the law and the benefit of the profession for the last fifty years; and the warmest acknowledgments were due not only from every Solicitor, but from the Bar, from the Bench, and from society at large, to its public-spirited projectors.

With reference to the second position alluded to at the commencement of his lecture, he would earnestly impress upon the minds of his hearers, that it was the imperative duty of every lawyer to enlarge the science of his profession to the greatest possible extent, and never allow a retrogression. A lawyer should so arrange his operations as to re-act on the science; for to stand still in a science is as impossible as to stop the growth or power of intellectual man. There is no stopping half-way — no mooring the boat in mid-channel, for as Virgil forcibly expresses it —

“Non aliter quam qui adverso vix flumine  
lenibam  
Remigis subigit: si brachia forte remisit,

Atque illum in præceptis prono rapit ævus anni."

The Lecturer then proceeded to shew that there was a distinction between municipal and trading corporations and professional or scientific societies. The former had only to protect their particular trades against the encroachments of others, and for that purpose to preserve any exclusive privileges which belonged to them; but the object of a professional or scientific society was, to associate together those learned and superior men who would reflect honor upon their brethren, and promote the best interests of society, by extending the advantages of science.

Another great purpose, also, of an organised profession was, to give security to society by the expulsion of any unworthy members, and also to ascertain the fitness of a candidate for admission, by requiring a compliance with such scientific requisitions as might be determined to be necessary. These were most important and sacred duties, and he regretted to say they were not adequately performed, either with regard to the bar or solicitors. Something of the effect of the evils of a neglect of scientific examination might be conceived if the consequence were contemplated of permitting every man to practise as an advocate or solicitor without requiring any education adapted to the requirements of the profession.

The Lecturer concluded, amidst much applause, with saying, that the absurdities and crying evils of such a system would, indeed, prevent its long continuance; but that no color may be given to any body of men in the state to advocate the experiment under any delusive modification or disguise, it ought to be felt as the indispensable duty of every gentleman who is now, or intends to become a member of this great profession, to endeavour, by all the means in his power, to maintain it in its fullest and most perfect integrity—and for that purpose, and with that object in his view, to let it be seen that he himself treats the profession as liberal and scientific in the highest and most proper sense, by adopting for himself, and encouraging in others, a large and intelligent plan of educational study,—by habituating his mind to a constant reference to acknowledged principles,—and more than all, and together with all, by setting out in his career with an unalterable determination never for one moment, under any temptations, or any pretexts or excuses, to pervert the principles or the practice of

the law to the furtherance of dishonorable or questionable courses.

With such principles and with such feelings, he said, widely spread amongst the rising members of the profession, we need have no fears for its stability; the profession will receive strength from the characters of the individuals,—and the Profession would in time reflect splendour and distinction on the individuals themselves;—and in such a happy state of things, we might rest in confidence that, as time should ripen causes into effects, each day would do something more, not only for the stability of the legal profession, but also for its honor, its influence, its national weight, and its indefinitely progressive amelioration.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### GENERAL ORDER.—FEES OF OFFICERS.

*It is ordered that the allowance granted to the tipstaffs of the Court of Chancery, for travelling and other expences, since the time of Lord Hardwicke, be henceforward raised to double that allowance.*

The Solicitor General stated to the Lord Chancellor, that he had an application to make to his Lordship, in reference to the fees allowed to the tipstaffs of this Court. It appeared by the Table of Fees which was made out by Lord Hardwicke, when Chancellor, that those officers were only allowed 6d. per mile, and 6s. 8d. per day for travelling and other expences, in removing different persons who were taken into custody for contempt. This subject had been brought under the notice of the Commissioners appointed to consider what salaries and emoluments ought to be allowed to the different officers of Courts of Justice; and they recommended that the 6d. per mile should be raised to 1s., and that the allowance for daily expences should be raised from 6s. 8d. to 13s. 4d. The present application was for the purpose of obtaining his Lordship's sanction to that recommendation.

The Lord Chancellor.—I feel much inclined to concede to the recommendation of the Commissioners; but as this would, in point of fact, be altering the Table of Fees, I should prefer consulting with his Honor the Master of the Rolls and the Vice Chancellor before I make any order.

His Lordship afterwards intimated to the Solicitor General, that he took an opportunity of consulting those learned Judges, and that they concurred with him in granting the application.

*Ex parte Allen.* Sittings at Lincoln's Inn after Trinity Term, 1834.

## LUNACY.—LUNATIC'S NEXT OF KIN.

*Circumstances in which the Lord Chancellor orders an annual allowance made by the lunatic's family to his next of kin, to be increased, and continued out of the lunatic's estate.*

Mr. Bacon appeared in support of a petition from a poor woman named Blake, who is the second cousin and sole next of kin and heiress of the lunatic, an aged man, with a fortune of 800*l.* a year. The petitioner stated that she had been in the habit of receiving an allowance of 18*l.* a year from the family of the lunatic, and she prayed a reference to the Master, to consider the propriety of making some addition to the allowance of the lunatic, in order that the same, or some other allowance, might be continued to the petitioner.

The Lord Chancellor entertained some doubts on the propriety of acceding to an application of this kind from a relation so remote as a second cousin. Learning, however, that the lunatic's property is freehold, worth 800*l.* a year, his allowance only 600*l.* a year, and that there is no will or settlement of any description, charging it, he directed the allowance to go, but with special directions to prevent the case from being drawn into precedent.

*Es parte Blake, in re Blake*, a lunatic, Sittings at Lincoln's Inn after Trinity Term, 1834.

## Vice Chancellor's Court.

## ACT OF PARLIAMENT—CONSTRUCTION.

*Resolved by the Lord Chancellor and the other Judges in the Courts of Equity, that no process do issue from those Courts into Scotland, in virtue of the act 2 & 3 W. 4, c. 33, notwithstanding the express words of that act.*

This was the case<sup>a</sup> in which the Lord Chancellor, in January last, refused an order for an attachment against the defendants (husband and wife), for contempt, in not putting in an answer to a bill, on the ground that the act of Parliament (2 & 3 W. 4, c. 33), under which the order was asked, was not meant to include Scotland (where the defendants were then), although he admitted the words clearly comprehended it within "the United Kingdom."

His Lordship afterwards had a conference on that subject with the other Judges in Equity, and they came to the conclusion not to issue any process from these Courts into Scotland under that act.

Mr. Cooper applied now, under the old practice, for an attachment against the defendants, for not putting in their answer. The application being for the purpose of obtaining the order of the Court to take the bill *pro confesso* against the defendants, he asked that it might be part of the order that the attachment should be carried into any county the six clerks might name. The order, as prayed, was granted.

*Lomas v. — and Wife.* T. T. 1834.

<sup>a</sup> 8 Leg. Obs. 58; see also 7 Leg. Obs. 540 and 543. This decision has been since overruled. *Vide ante*, p. 146.

## Rolls Court.

## PRACTICE.—INJUNCTION.

*Circumstances in which the Court has jurisdiction to grant a special injunction to restrain proceedings at law, where the common injunction has not been applied for or obtained.*

This was a motion to restrain the defendant from prosecuting process of outlawry against the plaintiff (Mr. Drummond), who was residing in the Netherlands. It appeared that the plaintiff had, in the year 1806, mortgaged certain fee-farm rents to the mother of the defendant, and that, after her death, a contract had been entered into between the plaintiff and defendant, as personal representative of his mother, for the sale of the mortgaged property, for the sum of 3000*l.* The defendant having received the sum of 500*l.* of the rents of the property, a dispute arose between the parties whether he received that sum in the character of mortgagee or purchaser, and the plaintiff arrested the defendant for 3000*l.*, the whole amount of the purchase money. The defendant commenced an action against the plaintiff for the recovery of his mortgage money and interest, and was proceeding in the process of outlawry against him for non-appearance thereto. The bill was filed by the plaintiff for a specific performance of the contract for sale, and the present application was made specially to restrain the defendant from proceeding in the process of outlawry, not having obtained the common injunction.

Mr. Pemberton and Mr. K. Parker supported the application, on the grounds that there being a subsisting contract which the plaintiff was entitled to have specifically performed, the defendant could not resort to proceedings at law, and that the plaintiff, by reason of his residence abroad, had had no notice of the proceeding in outlawry.

Mr. Bickersteth and Mr. Stuart, on the other side, contended, that there was sufficient evidence of notice of the proceedings in the process of outlawry, and that as the plaintiff had had time to move for the common injunction the present motion could not be granted consistently with the practice of the Court.

The Master of the Rolls said, the question was, whether, under the circumstances, it was competent to the party making the motion to apply specially for an injunction to stay proceedings at law, the common injunction not having been obtained. There could be no doubt that the Court had jurisdiction to entertain such applications under special circumstances; as, for instance, where the practice of certain provincial Courts rendered it impossible for the party to obtain the benefit of the common injunction in due time, or in cases where the party against whom the special application was made had placed himself in a situation which deprived the other party of the benefit of the ordinary remedy. Between the parties to the present suit there had been a great deal of hostility, and he could neither approve of

the action brought by the plaintiff, on the one hand, arresting the defendant, nor of the advantage taken of the known absence of the plaintiff by the defendant in the process of outlawry, on the other. Upon the evidence, his Honor was of opinion, that the plaintiff had not had an opportunity of obtaining the common injunction, and that under these circumstances the Court had jurisdiction upon a special application to restrain the proceedings in outlawry. As to the merits of the case, the defendant (the mortgagee) was undoubtedly entitled to all his remedies for the purpose of recovering the mortgage money and interest, but it was admitted that there was a subsisting contract which, if carried into effect, would convert the mortgagee into a purchaser. That was a question for the Court; and if it should be determined that the contract ought to be carried into effect, the money was now in the hands of the right party; but if from default of title, or any other cause, the contract should fail, then the defendant would be remitted to his character of mortgagee, and would be entitled to his mortgage money and interest. In the present state of the case the right course would be, to restrain the defendant from prosecuting the proceedings in outlawry, and to require the plaintiff to confess judgment in the action to the amount of the mortgage money and interest, to be dealt with as the Court should hereafter think fit.

*Drummond v. Pigou*, at Westminster, Nov. 4th, 1834.

PRACTICE.—SECURITY FOR COSTS.—  
PRIVILEGE.

*A peer filing a bill in the Court of Chancery, and residing out of the jurisdiction, is not privileged from giving the usual security for costs of the suit.*

This was a motion to discharge an order, requiring the plaintiff, who is a peer of Ireland residing abroad (at Carlsbad), to give security to answer the costs of the suit.

Mr. Bickersteth in support of the motion, admitted that he had not been able to find any case, in which an order to give security for costs had been discharged upon the ground of the privilege claimed by the plaintiff. He understood that a case had lately occurred in the Court of Exchequer, in which that Court had refused to grant an application, the object of which was, to subject Lord Ferrers to give security for costs. There had, no doubt, been cases in which persons entitled to privileges, such as ambassadors servants, had been required to give security for costs;<sup>a</sup> and on the other hand, there were cases in which persons residing abroad had not been required to give such security; as where the plaintiffs were naval or military officers,

or persons otherwise employed on foreign service. The plaintiff was entitled to all the privileges of an English peer, except that of sitting in parliament; but if he did not obey the orders of the Court, process of sequestration might issue against his goods, and his property be rendered available, though his person was exempted from arrest.

Mr. Pemberton said there was no authority on the point, for this reason, that it was now for the first time attempted to introduce an exception to the general rule. Lord Eldon had taken the sound distinction, that where a peer, or any other person, was residing abroad, upon the public service, he could not be called upon to give security for costs; but if a peer were residing abroad for his own pleasure, he was entitled to no higher privilege in this respect than any other plaintiff. Ambassadors' servants and other persons having privilege, had been compelled before instituting suits in this Court, to give security for costs, because their privilege might otherwise leave the defendant remediless; but if such persons, or if a peer whose person was also exempted from arrest, went abroad, was their liability to give security to be diminished, because by removing out of the jurisdiction of the Court, they had increased the insecurity of the defendant? There was no instance in which an exception had been made in favour of persons having privilege, who chose to go abroad; and it would be unjust to relax the rule of the Court in such cases.

The Master of the Rolls said he was of opinion that there was no ground for the claim made by the plaintiff as an Irish peer, to be exempted from the rule applicable to any other plaintiff, who was liable in consequence of his residence out of the jurisdiction, to give security for costs. The Courts relaxed the rule only in favour of plaintiffs whose absence was not voluntary, as in the case of naval and military officers, and other persons engaged abroad in the public service. His Honor accordingly refused the application.<sup>b</sup>

*Lord Aldborough v. Burton*.—Sittings at the Rolls after Trinity Term, 1834.

Exchequer of Pleas.

STATING PROCEEDINGS.—COSTS.—JUDGE'S  
ORDER.—ACCEPTOR.

*The acceptor of a bill of exchange, against whom an action is brought by the holder, but who disputes his liability, may compel the plaintiff to proceed, or obtain judgment of non-pros. although the debt and costs have been paid by the drawer.*

This was an action on a bill of exchange, brought by the holder against the acceptor. Proceedings were also commenced against the

<sup>a</sup> See *Gage v. Lady Stratford*, 2 Ves. sen. Bel's edit. in note.

<sup>b</sup> See also Beames on Costs, 178, &c.; *Ogilvie v. Herne*, 11 Ves. 598; and *Seilas v. Hanson*, 5 Ves. 261.

drawer, and in the latter action, the amount of the debt and costs were paid. An application was then made to a Judge at chambers by the plaintiff in the present action, to be allowed to stay proceedings, the debt and costs having been paid. An order to that effect was made, and an application was afterwards made to the Court to set aside that order, on the ground that the defendant disputed his liability, and that his defence was forgery of the acceptance; and further, that the defendant might be at liberty to sign judgment of *non-prova*. in four days. It was contended, that as the defendant disputed his liability, he had no other means of obtaining his costs, which were already incurred in defending the action, but by the present application.

*Per Curiam*.—The defendant certainly has no other means of obtaining indemnification for his costs than by making such a motion as the present. He contends that he is not liable on the bill, because the supposed acceptance is a forgery. The plaintiff must either proceed with his action, in order that the defendant may be let in to his defence on the bill, or he must pay the defendant his costs. The present rule must therefore be made absolute, without costs, a learned Judge having made the order which this rule seeks to rescind.

Rule absolute, without costs.—*Lewis v. Dulymphe*, M. T. 1834. Excheq.

PRIVILEGE FROM ARREST.—KING'S SHY-  
VANT.—SOMERSET HERALD.

*Where it is doubtful whether a person holding an office under the King, may be required to perform the duties of that office, the Court will not relieve him summarily from arrest, on the ground of his privilege.*

In this case a person named Disney, who held the office of Domestic Herald, was arrested, and an application was then made to the Court to discharge him out of custody, on the ground that he was privileged from arrest, in consequence of the office which he held under his Majesty. The affidavit on which the application was made set forth that the defendant was liable to be called upon to attend his Majesty at any time, to perform the duties of his office; that he might be required at any time personally to attend upon every occasion of an investiture of a Knight of the Garter. The affidavits, however, did not shew any instance in which this privilege had been allowed by the Courts.

*Per Curiam*.—Where a servant of the King is privileged from arrest, it is on the ground that his constant attendance on his Majesty is required. Now it does not appear, from the affidavits in this case, very clearly, what are the duties of the Somerset Herald, and consequently, whether continual attendance on the King is required. As it does not clearly appear that he is privileged, the Court cannot interfere to relieve him. If he is privileged in point of law, he may avail himself of his writ of *prixi-*

lege. The present rule must therefore be discharged.

Rule discharged.—*Lealie v. Disney*, M. T. 1834. Excheq.

ARREST OF JUDGMENT.—SLANDER.—  
VARIANCE.

*It is not a ground for arresting a judgment in an action for slander, that the writ appeared to have issued on the 4th of June, the words having been spoken on the 27th.*

This was an action for slander. The plaintiff had a verdict, and the record was made up. It appeared by it, that the writ had been issued on the 4th June, and the words were alleged to have been spoken on the 27th of the same month. An application was afterwards made to arrest the judgment, on the ground that the writ appeared by the record to have been issued before the cause of action arose. The writ was now the commencement of the action, and therefore the variance was material.

*Per Curiam*.—There is nothing in the objection; the day stated in the declaration here was immaterial. It is different from a case of an action on a promissory note, where there was no cause of action at the time when the declaration was supposed to be filed. The rule now prayed for cannot be granted.

Rule refused.—*Steward v. Layton*, M. T. 1834. Excheq.

SERVICE OF DECLARATION.—DEFENDANT'S  
LAST PLACE OF ABODE.

*If it is sought to serve a declaration in a special manner, an application for that purpose must be made previous to its being served out of the ordinary course.*

In this case, the defendant having left his place of residence, without the plaintiff being able to discover whither he had gone, the declaration was left at his last place of residence. An application was afterwards made for a rule to shew cause why such service should not be good service, and the plaintiff be at liberty to sign judgment for want of a plea.

The Court refused the rule, on the ground that the application should have been made in the first instance, for leave to serve the declaration in a special manner. No such application having been made, and consequently no such leave given, the Court could not now make that good service which was not consistent with the rules of the Court. In all such cases a previous application must be made, in order to entitle the party to effect a special service of a declaration.

Rule refused.—*Troughton v. Cruven*, M. T. 1834. Excheq.

SERVICE OF WRIT.—IRREGULARITY.—  
LACHES.—REASONABLE TIME.

*What is too long a period to be allowed to elapse between the service of an irregular writ and an application to set it aside for an irregularity.*

In this case the writ was indorsed as having been issued by one George Smith, residing at "38, Chancery-lane," Worcester. It was sought to set this writ aside, on the ground that no such place in Worcester could be found. The writ was served on the 25th October, but the application for the rule *nisi* to set it aside on the ground of the above irregularity was not made until the 3d November, that being the first day of term, the 2d of the month having fallen on a Sunday.

On shewing cause against the rule, it was contended that the defendant had not come within a reasonable time to the Court, according to the practice, to avail himself of an irregularity, and therefore had been guilty of laches, which deprived him of his right to avail himself of the irregularity.

*Per Curiam.*—This application, we think, is too late. It should have been made on the 1st November at the latest. The present rule must therefore be discharged, and with costs.

Rule discharged with costs.—*Tyler v. Green*, M. T. 1834. Excheq.

AWARD.—ARBITRATOR.—REFERENCE.—  
BARRISTER.

*An award will be supported though the arbitrator, not a barrister, is wrong in point of law.*

This was a rule which was obtained on the ground that the arbitrators had given directions contrary to law, concerning a sum of 8*l*.

On shewing cause against this rule, it was objected, that as no question of law was raised by the arbitrator either on the award or otherwise, the Court could not review his decision.

In support of the rule, it was contended, that as the award was made by two gentlemen not of the bar, this Court would examine into the correctness of their decision. It could clearly be shewn that the law had been grossly mistaken as to 8*l*. which they had directed to be paid by the plaintiff to the defendant.

*Alderson, B.*—A few months ago, I was of opinion that a distinction existed; but on examining more fully the cases, I have altered my opinion. The point was expressly decided by Lord Eldon in *Ching v. Ching*, 6 Ves. Jan. 282.

*Ashton v. Poynter*. M. T. 1834. Excheq.

WRIT OF TRIAL.—SHERIFF.—PUTTING OFF  
TRIAL.

*After the jury were sworn, an application to put off the trial before the under-sheriff,*

*on the ground that a material witness was absent, was refused; a new trial was allowed only on payment of costs.*

In this case, an issue was directed to be tried before the sheriff. The jury being sworn, an application was made on behalf of the defendant to put off the trial, on account of a material witness being absent. This application was refused, as he thought he had no power for that purpose. The plaintiff had a verdict. On moving for a new trial on the ground that the under-sheriff had the same powers as a judge at *nisi prius*,

Lord Lyndhurst, C. B.—In order to put off the trial, the application should have been made before the Court previous to swearing the jury. The defendant may have a new trial only on payment of costs.

*Packham v. Newman*, M. T. 1834. Excheq.

PROMISSORY NOTE.—WRIT OF TRIAL.—  
LACHES.

*The nonproduction of a promissory note at a trial, when the action is brought upon it, is no ground for moving for a new trial, unless the objection to its non-production was taken at the time.*

On moving for a new trial, it appeared that it was an action on a promissory note by the indorsee against the indorser. At the trial before the secondary the evidence was principally an admission of a debt, and a proposal to pay by instalments. The note, however, on which the action was brought was not produced, nor was any objection taken by the defendant to the non-production of it. The production of it was necessary in point of law, and therefore the plaintiff could not be entitled to retain his verdict without it.

*Per Curiam.*—It should appear either by the notes or the affidavits on which this application is founded, that an objection at the time of the trial was taken to the non-production of the note. It does not, however, appear that any such objection was taken, and therefore it is now too late to make it. The rule prayed for cannot be granted.

Rule refused.—*Hunn v. Neck*, M. T. 1834. Excheq.

AMENDMENT.—ISSUE.—NOTICE OF TRIAL.—  
JUDGE'S ORDER.

*If a party obtains an order for leave to amend he is not bound to make the amendment, but may proceed as if no such order had been made.*

In this case, the plaintiff, a few days before the assizes, obtained an order from a learned judge, for leave to amend his declaration, by striking out the second count of the declaration; the defendant to have five days time to plead *de novo*. The plaintiff, however, did not strike out the count in question, but delivered the issue with the declaration in the original



state. He afterwards gave notice of trial with the record still in that state. The defendant, on receiving the issue, returned it as irregular. At the assizes the plaintiff had a verdict. An application was now made for a new trial, on the ground of surprise, the plaintiff not having availed himself of the judge's order, as it was alleged he was bound to do.

*Per Curiam*.—Here the order was that the plaintiff might be at liberty to amend. That did not compel him to do so. The defendant had not been taken by surprise, as the general notice of trial shewed that he intended to proceed on the whole record.

Rule refused.—*Black v. Sangster*, M. T. 1834. Excheq.

### Eschequer, Nisi Prius.

NEW PLEADING RULES.—ACCEPTOR.—ADMISSION.—SPEEDY EXECUTION.

*If the acceptor of a bill of exchange denies the consideration and indorsement to the plaintiff, who is the holder, he admits his acceptance.*

*If a plaintiff obtains a verdict in an undefended cause he ought to have execution for the amount as soon as it can be obtained according to the practice of the Court.*

This was an action on a bill of exchange, brought by the holder against the acceptor. The declaration stated the mode in which the bill had become indorsed to the plaintiff. The defendant pleaded, first, that there was no consideration for the bill stated in the declaration, and, secondly, that it had not been indorsed in manner and form as therein alleged.

When the case was called on, no one appeared for the defendant.

The plaintiff's counsel then submitted that by the pleas which the defendant had adopted the acceptance was admitted; and as he did not appear to support his special pleas the plaintiff was entitled to a verdict.

*Alderson*, B. was of opinion that by the form of pleading here the defendant had admitted the acceptance of the bill by himself, and therefore as he had not appeared to support his special pleas the plaintiff was entitled to a verdict.

The jury accordingly found for the plaintiff to the amount of the bill and the interest which had accrued.

Application was then made for speedy execution.

*Alderson*, B. Directed execution immediately to issue, as he was of opinion that where a verdict was obtained in an undefended cause, the plaintiff ought to have execution as soon as it could be got. He of course meant as soon as costs could be taxed,

Execution accordingly. *Anon.*—Sittings after M. T. 1834.

### COMMON PLEAS TERMAGES.

HAVING read the late Rule of Court, the result of which must be (if effective) enormously to augment the revenue drawn from termages, without reference to the exigencies of the case, (which it is to be presumed the present payment does not very inadequately meet,) I am disposed to ask, what is the authority under which such a rule is made and sanctioned, and what may practically be the mode of enforcing, or the consequences of neglect? In part, it is only a renewal of the old rule or custom of the Court, that attorneys do pay; and though by the new rule they are not only ordered to pay, but to enter their certificates, is the matter carried a jot further if they practically disobey both, as they have been used to do the one?

I do trust that this avowed attempt to make the already over-taxed attorneys pay for the Criers, &c. of the Court, and to add to the vexation and trouble attendant on certificates, and the admissions in so many Courts, will excite the Law Society's attention to a really important practical point—that of getting *one roll* of admission to the profession or degree of attorney, over which each Court should have jurisdiction. This would prevent a most annoying and vexatious practice, apparently contrived only to annoy young men, for the gain of a few officials, and occasioning much needless expense in searches, &c.—The matter has become very serious in connection with the late decision, refusing attorneys all costs, (though practising according to law,) if not admitted in every Court; and aggravated as it now is by a fifth admittance. Surely, we have a fair claim on the present Lord Chancellor, for attention to a properly directed application on the subject.

It would be better, cheaper, and more convenient to all parties, to affix a round fee on admission to the general roll, out of which should be borne all necessary expenses. The net return, for all useful purposes, might thus be much increased, and yet the young attorney's gross payment would be diminished, and much vexation and trouble saved.

Can we not have some enquiry made in the mean time, as to what portion goes to the Criers; what is charged for the same object in Court fees of various sorts; and finally, what the Crier's salary ought to be?

T. E. T.

EXCHEQUER OF PLEAS SITTINGS.

There are 40 remanets in Middlesex, and 14 in London.

*New Causes* only will be tried in Term in London.

Short remanets may be taken in Middlesex in term by consent.

The entry of causes closes two days before the Sitting-days.

*Marshall's Office, Dec. 24, 1834.*

ANSWERS TO QUERIES.

Common Law.

AGREEMENTS IN WRITING. P. 144.

A Constant Reader will see, on reference to the Statute of Frauds, 29 Car. 2, c. 3, s. 17, that no contract for the sale of any goods, wares, and merchandizes for the price of 10*l.* or upwards, shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

LECTOR.

Law of Property and Conveyancing.

LIABILITY OF RETIRING PARTNER. P. 143.

1. Mr. Gow, in his treatise on Partnership, states, that if an annuity to a retiring partner be casual, indefinite, and depending on the accidents of trade, the original liability is not extinguished, because there is not a complete extinction of interest in the profits; and refers to the dictum of *Blackstone, J.*, in *Grace v. Smith*, 2 BL 998—See p. 21, 3d. edition.

I therefore, submit that *B.*'s annuity, being conditional and depending on the profits of *A.*, is not sufficiently definite and certain to discharge him from his original liability as partner with *A.*

LECTOR.

2. In the case of a partner retiring from the firm, and withdrawing his name therefrom, the distinction is, that he still remains liable, if he agree to receive, notwithstanding his secession, a share of the profits, as such *indistinctly*: *ulter* if he be merely entitled to a certain annuity, or fixed sum, not dependant upon, or payable according to the profits, but payable at all events; and, in such case, there is no objection to the out-going partner relying upon the profits, merely as a fund for payment of the money secured to him. See Chit. Prac., Law of Contracts not under Seal,

p.195, and the cases there cited. The annuity granted to *B.*, is dependent upon, and payable according to the profits, that is, it is to be subject to reduction of one-half of *A.*'s actual profits, when, in any year, such profits shall not amount to 2000*l.*; consequently, I think *B.* is still to be considered a partner.

E.

Practice.

NEW RULES OF PLEADING. P. 144.

It appears from the rules of H. T. 4 W. 4, that only matters in *confession and avoidance*, can be specially pleaded; therefore I am inclined to think, that it is not compulsory on the party, who is liable to be summoned to the Court of Requests, to plead such liability specially, as it is not a matter in confession and avoidance of the *action*, but is merely applicable to costs.

LECTOR.

PRACTICE.—ABATEMENT OF ACTION. P. 80.

I think there is not the least doubt that *A.*'s action abates, and that consequently his executors must begin *de novo*. At common law, the death of a *sole* plaintiff would have abated the suit, but the statute 8 & 9 W. 3. cap. 11. enacts, that "if any plaintiff happen to die after an interlocutory judgment, and before a final judgment obtained therein, the action shall not abate by reason thereof.—It has been held that "if either party died before the assizes, the action abated; but if after the assizes, though before the trial, it did not, for the assizes is but one day in law." (Salk. 8, pl. 21. 2 Raymond, 1415.) This I think clearly shows that the death of *A.* in so early a stage of the proceedings, abates the action.

S. D.

Law of Landlord and Tenant.

DISTRESS.—SUNDAY. P. 143.

The statute 29 C. 2. c. 7. enacts that "no person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day:" therefore, a distress made on a Sunday by a regular bailiff would be clearly bad; but in the case of *Drury v. Defontaine*, 1 Taun. 131, it was decided that an act done on a Sunday, not in the exercise of a man's ordinary calling, was not illegal; hence it seems that the landlord may distrein in *person* on a Sunday. As to *J. A. M.*'s 2nd query, Selwyn, Gilbert and Woodfall, make no limitation to the rule that "before sun-rising and after sun-set, no man may distrein but for damage feasant."

GRADUS.

## QUERIES.

### Estate of Property and Conveyancing.

#### JOINT-TENANCY.

*A.* and *B.* purchase a leasehold estate on behalf of themselves and *C.*, *D.*, *E.*, and *F.*; the habendum is to *A.* and *B.* in trust for themselves and the others. Is there any joint-tenancy as between the lessees and *C.*, *D.*, *E.*, and *F.*? Cannot either of the latter dispose of his equitable share by will; or will it not devolve to his next of kin in case of intestacy?

J. A. M.

#### STAMPS.—LEASE FOR A YEAR.

In a lease for a year (which is generally short), can any other matter than what is incidental to the instrument *as such* be introduced, relating to the subject matter, such as a covenant for production of title deeds of the property conveyed by the release (thereby perhaps saving progressive duty in the latter), without having a distinct *deed stamp* exclusive of the stamp applying to such lease for a year, and either in case the latter does or does not amount to 35 shillings?

J. A. M.

#### ADDITIONAL DEED STAMPS.

After the execution of a deed bearing an insufficient stamp (through inadvertence), can an additional stamp to make good the *defect* only be now obtained on affidavit or otherwise? Up to a certain period the commissioners could only stamp the deed with the full duty, without allowing for the erroneous stamp, which was a dead loss, whatever the amount, and in the higher rates of *ad valorem* duties, very serious. It is apprehended that relief has been given in such case by a recent act—*see* *quare*.

J. A. M.

#### RECEIPT FOR CONSIDERATION.

Under the usual clause that purchasers shall not be answerable for the application of purchase money, on having the receipt of the vendors, or in any other case: is it necessary that the receipt for the consideration indorsed on the deed should be attested? or is it not enough to have the signatures of the vendors? And is there not greater propriety in the latter course, in all cases when the same attesting witness or witnesses cannot attest the signatures of several vendors, residing at widely distant places, nor consequently see the money paid to them *all*?

J. A. M.

#### STOCK.—FORGED POWER.

*A.* in her lifetime was entitled to certain stock. *B.*, her son in London, was in the habit of receiving for her, and remitting her dividends. *A.* died leaving a will, by which she bequeathed this stock to her daughter *C.*, who administered. *C.*, on searching at the bank,

discovered that *B.*, her brother, had in *A.*'s lifetime sold out the stock by a forged power of attorney. *C.* took no proceedings against her brother *B.*, who died insolvent. Can *C.* recover against the Bank of England the stock so fraudulently sold out, on the authority of *Davis v The Bank of England*? And did not that case decide that the owner of property in the funds still remained the legal holder of the stock, notwithstanding it had been transferred to another name under a forged power of attorney? Will the Statute of Limitations affect *C.*'s claim? and if so, from what event would it run—the fraudulent transfer, the death of *A.*, or the discovery of the forgery?

F.

#### COVENANT FOR QUIET ENJOYMENT.

*A.* leases certain houses to *B.*; *B.* assigns the lease to *C.*, and *C.* to *D.* *C.* while assignee in possession, grants a lease of one of the houses to *E.* *D.* is ejected by *A.* Has *C.* any defence (legal or equitable) to an action for breach of the covenant for quiet enjoyment brought by *E.*, *E.* not having performed the covenants on his part, in the lease from *C.* to *E.*?

Z.

#### COVENANT.—INSURANCE.

*A.* leases to *B.*, and *B.* covenants to insure the premises in an office named in the lease. *A.* assigns the property to *C.*, and *C.* insures the house in his own name in another office, *B.* paying *C.* for the insurance at the time of paying the rent. Is not the insurance, although in an office not named in the lease, or the insuring by *C.*, a sufficient performance of the covenant made by *B.* to *A.*?

R.

## THE EDITOR'S LETTER BOX.

The Legal Almanack and Remembrancer for 1835 is now published, and comprises Lists of the Judges and Officers of all the Courts; Barristers, with the Dates of their Call; Regulations of the Inns of Court; the Counsel attending each Circuit; a Law Calendar, adapted peculiarly for the use of the Profession; Members of the Incorporated Law Society; Terms and Returns, Holidays, Law Offices and Times of Attendance, and various other Lists and Tables. Price 3s. 6d. stitched, or 4s. 6d. half-bound, and interleaved for a Diary.

The letters relating to Acknowledgments of Leases for a Year;—the New Rule in the Common Pleas;—the increase of Articled Clerks,—and Barring Entails, are under consideration.

The Queries and Answers of M.T.; E.P.; A.Z.; S.W., and T.T.T., have been received.

The suggestions of publishing authentic *Firms*, for the use of Practitioners, shall be considered.

# The Legal Observer.

Vol. IX.

**SUPPLEMENT  
FOR DECEMBER, 1834.**

No. CCXLV.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## LEGAL BIOGRAPHY.

No. VI.

SIR W. JONES.

SIR WILLIAM JONES was born in London in 1746. His father died when he was only three years old, and his early education was left to the care of his mother, who to his incessant questions, invariably answered, “read, and you will know;” a maxim to which he often acknowledged his obligation. In 1753, he was placed at Harrow school, where he was at first remarkable for diligence rather than superiority of talent; but in his twelfth year he was removed to the Upper School, where he soon distinguished himself.

In his seventeenth year he was entered at Oxford, where he continued his classical reading, and entered on his oriental studies. In 1767, having accepted the offer of Earl Spencer, to become private tutor to his son, Lord Althorp, he accompanied the family to the Continent. He resided for several years in the family of Lord Spencer, and at Harrow with his pupil.

In 1770, when in his twenty-fourth year, he resigned his tutorship, commenced the study of the law, and was admitted a student of the Temple on the 19th of September in that year.

The following extracts from his letters will best describe his views and feelings:—

“On my late return to England, I found myself entangled, as it were, in a variety of important considerations. My friends, companions, relations, all attacked me with urgent solicitations to banish poetry and oriental literature for a time, and apply myself to ora-

tory and the study of the law; in other words, to become a barrister, and pursue the track of ambition. Their advice, in truth, was conformable to my own inclinations; for the only road to the highest stations in this country is that of the law, and I need not add how ambitious and laborious I am.’ In another letter, addressed to his friend Mr. Wilmot, the son of Chief Justice Wilmot, he thus speaks of the commencement of his legal studies:—‘I have just begun to contemplate the stately edifice of the laws of England—

‘The gather’d wisdom of a thousand years—’

if you will allow me to parody a line of Pope. I do not see why the study of the law is called dry and unpleasant; and I very much suspect, that it seems so to those only who would think any study unpleasant which required a great application of the mind and exertion of the memory. I have just read most attentively the two first volumes of Blackstone’s Commentaries, and the two others will require much less attention. I am much pleased with the care he takes to quote his authorities in the margin, which not only give a sanction to what he asserts, but point out the sources to which the student may refer for more diffusive knowledge. I have opened two common-place books, the one of the law, the other of oratory, which is surely too much neglected by our modern speakers. I do not mean the popular eloquence which cannot be tolerated at the bar; but that correctness of style and elegance of method which at once pleases and persuades the hearer. But I must lay aside my studies for about six weeks, while I am printing my Grammar, from which a good deal is expected, and which I must endeavour to make as perfect as a human work can be. When that is finished, I shall attend the Court of King’s Bench very constantly, and shall either take a lodging in Westminster, or accept the invitation of a friend in Duke-street, who has made an obliging offer of apartments.’

“The activity of mind and studious ardour which distinguished Mr. Jones, are also mani-

N

fested in a letter to Dr. Bennett.—‘I have learned so much, seen so much, written so much, said so much, and thought so much, since I conversed with you, that, were I to attempt to tell half what I have learned, seen, writ, said, and thought, my letter would have no end. I spend the whole winter in attending the public speeches of our greatest lawyers and senators, and in studying our own admirable laws, which exhibit the most noble example of human wisdom that the mind of man can contemplate. I give up my leisure hours to a political treatise on the Turks, from which I expect some reputation; and I have several objects of ambition which I cannot trust to a letter, but will impart to you when we meet. If I stay in England, I shall print my *De Poesi Asiatica* next summer, though I shall be at least two hundred pounds out of pocket by it. In short, if you wish to know my occupation, read the beginning of Middleton’s Cicero, p. 13—18, and you will see my model; for I would willingly lose my head at the age of sixty if I could pass a life at all analogous to that which Middleton describes.’<sup>a</sup>

He was called to the Bar in January, 1774, and in 1775, attended the Oxford Circuit and Sessions. In 1776, he was, without solicitation, appointed a Commissioner of Bankrupts; and in 1777, appears to have acquired considerable practice. In a letter in that year, he says;—

“I should have great pleasure in complying with your kind and friendly request, by furnishing my contribution to the new work which is soon to appear amongst you, and would exert myself to this purpose; but the absolute want of leisure makes it impossible. My law employments, attendance in the courts, incessant studies, the arrangement of pleadings, trials of causes, and opinions to clients, scarcely allow me a few moments for eating and sleeping.” At the conclusion of the year, he was compelled to visit Bath, in order to recruit his exhausted spirits, where, as he informs his friend Lord Althorp, “he abstained with reluctance from dancing, an amusement too heating for a water-drinker.”

In his preface to the orations of Isæus, published in 1778, he says:—

“There is no branch of learning from which a student of the law may receive a more rational pleasure, or which seems more likely to prevent his being disgusted with the dry elements of a very complicated science, than the history of the rules and ordinances by which nations eminent for wisdom and illustrious in arts have regulated their civil polity: nor is this the only fruit he may expect to reap from a general knowledge of foreign laws, both ancient and modern; for while he indulges the liberal curiosity of a scholar in examining the

customs and institutions of men, whose works have yielded him the highest delight, and whose actions have raised his admiration, he will feel the satisfaction of a patriot in observing the preference due in most instances to the laws of his own country above those of all other states; or, if his just prospects in life give him hopes of becoming a legislator, he may collect many useful hints for the improvement even of that fabric which his ancestors have erected with infinite exertions of virtue and genius, but which, like all human systems, will ever advance nearer to perfection, and ever fall short of it.”

He appears in the same year to have contemplated the desirableness of a Judgeship in the East. In a letter to Lord Althorp, he says:—

“The disappointment to which you allude, and concerning which you say so many friendly things to me, is not yet certain. My competitor is not yet nominated: many doubt whether he will be; I think he will not, unless the chancellor should press it strongly. It is still the opinion and wish of the bar that I should be the man. I believe the minister hardly knows his own mind. I cannot legally be appointed till January, or next month at soonest, because I am not a barrister of five years’ standing till that time; now, many believe that they keep the place open for me till I am qualified. I certainly wish to have it, because I wish to have twenty thousand pounds in my pocket before I am eight-and-thirty years old, and then I might contribute in some degree towards the service of my country in parliament, as well as at the bar, without selling my liberty to a patron, as too many of my profession are not ashamed of doing; and I might be a speaker in the house of commons in the full vigour and maturity of my age; whereas, in the slow career of Westminster-hall, I should not, perhaps, even with the best success, acquire the same independent station till the age at which Cicero was killed. But be assured, my dear lord, that if the minister be offended at the style in which I have spoken, do speak, and will speak, of public affairs, and on that account should refuse to give me the judgeship, I shall not be at all mortified, having already a very decent competence, without a debt or care of any kind.”

He published in the year 1780, a pamphlet, called *An Enquiry into the legal Mode of Suppressing future Riots, with a Constitutional Plan of Defence*. He also about the same time published his celebrated *Essay on the Law of Bailments*. In 1782, we have the following account of his studies:—

“The delays about the Indian judgeship have, it is true, greatly injured me; but with my patience and assiduity I could easily recover my lost ground. I must, however, take the liberty here to allude to a most obliging letter of your lordship, from Chilboltot, which I received so long ago as last November, but was

<sup>a</sup> Parr’s Works, vol. i. p. 55.

prevented from answering till you came to town. It was inexpressibly flattering to me; but my intimate knowledge of the nature of my profession obliges me to assure you, that it requires the whole man, and admits of no concurrent pursuits; that, consequently, I must either give it up, or it will engross me so much, that I shall not for some years be able to enjoy the society of my friends or the sweets of liberty. Whether it be a wise part to live uncomfortably in order to die wealthy, is another question; but this I know by experience, and have heard old practitioners make the same observation, that a lawyer who is in earnest must be chained to his chambers and the bar for ten or twelve years together. In regard to your lordship's indulgent and flattering prediction, that my Essay on Bailment would be my last work, and that for the future, business and the public would allow me to write no more, I doubt whether it will be accomplished, whatever may be my practice or situation; for I have already prepared many tracts on jurisprudence, and when I see the volumes written by Lord Coke, whose annual gains were twelve or fourteen thousand pounds, by Lord Bacon, Sir Matthew Hale, and a number of judges and chancellors, I cannot think, that I should be hurt in my professional career by publishing, now and then, a law tract upon some interesting branch of the science; and the science itself is indeed so complex, that without *writing*, which is the *chain of memory*, it is impossible to remember a thousandth part of what we read or hear. Since it is my wish, therefore, to become in time as great a lawyer as Sulpicius, I shall probably leave as many volumes of my works as he is said to have written. As to politics, I begin to think that the natural propensity of men to dissent from one another will prevent them, in a corrupt age, from uniting in any laudable design; and at present I have nothing to do but to *rest on my oars*, as the Greek philosophers, I believe, called ἐρέχου a word which Cicero applies in one of his letters to the same subject."

In 1783, however, when he was still but comparatively young, being then thirty-seven, he received his appointment as a Judge of the Supreme Court at Fort William, in Bengal. He owed this to Lord Ashburton, to whom he thus wrote during his voyage:—

"As to you, my dear lord, we consider you as the spring and fountain of our happiness, as the author and parent (a Roman would have added, what the coldness of our northern language will hardly admit), the *god* of our fortunes. It is possible, indeed, that, by incessant labour and irksome attendance at the bar, I might in due time have attained all that my limited ambition could aspire to; but in no other station than that which I owe to your friendship could I have gratified at once my boundless curiosity concerning the people of the East, continued the exercise of my profession, in which I sincerely delight, and enjoyed

at the same time the comforts of domestic life. The grand jury of the county of Denbigh have found, I understand, the bill against the Dean of St. Asaph, for publishing my dialogue; but as an indictment for a theoretical essay on government was, I believe, never before known, I have no apprehension for the consequences. As to the doctrines of the tract, though I shall certainly not preach them to the Indians, who must and will be governed by absolute power, yet I shall go through life with a persuasion that they are just and rational; that substantial freedom is both the daughter and parent of virtue, and that virtue is the only source of public and private felicity."

In addition to the discharge of his judicial duties, Sir W. Jones devoted himself to a translation of a Digest of Hindu and Mahommedan Laws on the model of Justinian. In 1790, we have the following account of his pursuits in one of his letters:—

"I give you hearty thanks for your postscript, which (as you enjoin secrecy) I will only allude to ambiguously, lest this letter should fall into other hands than yours. Be assured, that what I am going to say does not proceed from an imperfect sense of your kindness; but really I want no addition to my fortune, which is enough for me; and if the whole legislature of Britain were to offer me a station different from that which I now fill, I should most gratefully and respectfully decline it. The character of an ambitious judge is, in my opinion, very dangerous to public justice; and, if I were a sole legislator, it should be enacted that every judge, as well as every bishop, should remain for life in the place which he first accepted. This is not the language of a cynic, but of a man who loves his friends, his country, and mankind; who knows the short duration of human life; recollects that he has lived four and forty years, and has learned to be contented. Of public affairs you will receive better intelligence than I am able to give you. My private life is similar to that which you remember: seven hours a day, on an average, are occupied by my duties as a magistrate, and one hour to the New Indian Digest: for one hour in the evening I read aloud to Lady Jones. We are now travelling to the sources of the Nile with Mr. Bruce, whose work is very interesting and important. The second volume of the Asiatic Transactions is printing, and the third ready for the press. I jahber Sanscrit every day with the pundits; and hope before I leave India to understand it as well as I do Latin."

He published a translation of the Ordinances of Menu, in the early part of 1794, and soon afterwards, namely, in April in that year, he was seized with an inflammation of the liver, which speedily terminated his valuable life. Lord Teignmouth gave the following account of his fatal illness:—

"On the morning of that day (the 27th of April), his attendants, alarmed at the evident symptoms of approaching dissolution, came precipitately to call the friend who has now the melancholy task of recording the mournful event. Not a moment was lost in repairing to his house. He was lying on his bed in a posture of meditation, and the only symptom of remaining life was a small degree of motion in the heart, which, after a few seconds, ceased, and he expired without a pang or groan. His bodily suffering, from the complacency of his features and the ease of his attitude, could not have been severe; and his mind must have derived consolation from those sources where he had been in the habit of seeking it, and where alone, in our last moments, it can ever be found."

A summary of the extraordinary attainments and eminent character of Sir W. Jones has been ably and eloquently drawn by Mr. H. Roscoe, in his *Lives of Eminent British Lawyers*, from which we extract the following:—

"His knowledge was extensive, various, and accurate to a degree which has rarely been equalled. As the keys to the literary treasures of other countries, he applied himself, very early in life, to the acquisition of foreign languages with an assiduity and success which excited the wonder and admiration of his contemporaries. He made himself acquainted critically with eight languages,—English, Latin, French, Italian, Greek, Arabic, Persian, and Sanscrit. Eight were studied less perfectly, but were intelligible to him with the assistance of a dictionary—Spanish, Portuguese, German, Runic, Hebrew, Bengali, Hindu, and Turkish; and on twelve more he had bestowed considerable attention—Tibetan, Pali, Phalavi, Deri, Russian, Syriac, Ethiopic, Coptic, Welsh, Swedish, Dutch, and Chinese. His skill in several of these languages he has attested by the excellent translations which he at various times gave to the world. But to have confined the powers of his active and enlightened mind to the acquisition of that which is merely the symbol of ideas—the casket in which the rich treasures of intellect are contained—would have been unworthy of his genius. He applied himself sedulously to the acquisition of true knowledge; and from the doctrines of philosophy, the records of history, and the teachings of science, derived those higher lessons which regulated his useful and beautiful life. To enumerate the various branches of literature and science in which he excelled, hardly comes within the scope of the present memoir, the chief design of which is to record his professional history.

"If an explanation of the means by which he accomplished these extraordinary intellectual labours is sought for, it may be found in that persevering industry which was so distinguishing a feature of his character, and in the early adoption of the invaluable maxim,

*that whatever had been attained was attainable by him.* "It was," says his biographer, "a fixed principle with him, from which he never voluntarily deviated, not to be deterred by any difficulties that were surmountable, from prosecuting to a successful termination what he had once deliberately undertaken." This magnanimous confidence in the success of virtuous exertion is the root of greatness. "There is nothing in the world," says Burke, "truly beneficial, that does not lie within the reach of an informed understanding and a well-directed pursuit. There is nothing that God has judged good for us, that he has not given us the means to accomplish, both in the natural and moral world."<sup>a</sup>

"The professional acquirements of Sir William Jones were undoubtedly of a very high order. He commenced the study of the law at a later period of life than is usual; and he brought with him to the task powers of mind polished to the finest brilliancy by unremitting exercise, and tempered and proved in a variety of pursuits. With these advantages, he applied himself to the study of his profession as to that of a science, resting upon principles, and to be mastered, like other sciences, by an exact and orderly method. His *Essay on the Law of Bailments* affords an instance of the logical manner in which his mind was accustomed to deal with legal subjects; and it has been already stated that he had treated several other branches of the law upon the same model. His acquaintance with legal writers was doubtless very extensive; and his admirable memory enabled him to preserve the greater portion of whatever he perused. As a judge his character stood stainless and unrepined. "The inflexible integrity," says his biographer, "with which he discharged the solemn duty of this station will long be remembered in Calcutta both by Europeans and natives. So cautious was he to guard the independence of his character from any possibility of violation or imputation, that no solicitation could prevail upon him to use his personal influence with the members of administration in India to advance the private interests of friends whom he esteemed, and which he would have been happy to promote. He knew the dignity and felt the importance of his office, and, convinced that none could afford him more ample scope for exerting his talents for the benefit of mankind, his ambition never extended beyond it. No circumstance occasioned his death to be more lamented by the public than the loss of his abilities as a judge, of which they had had the experience of eleven years."

"In all the relations of private life Sir William Jones was truly amiable and excellent, securing the respect and winning the affection of all who were fortunate enough to enjoy his intimacy. Amongst these were many of the most distinguished men of his day, one of whom, the friend of his childhood, has drawn in three lines his beautiful and exemplary

<sup>a</sup> Speeches, vol. ii. p. 36.

character. "To exquisite taste, and learning quite unparalleled," says Dr. Parr, "Sir William Jones is known to have united the most benevolent temper and the purest morals."<sup>b</sup>

"But the crowning virtue of Sir William Jones's character was his pure and ardent desire to benefit mankind. To this shrine he carried all the rich offerings of his taste, his learning, and his genius. In this great ambition every meaner passion was forgotten. He loved knowledge with that wise love which teaches us that it is the means only, and not the end,—the means of laying open to man the sources of his true happiness,—virtue, and freedom, and truth, and honour. Unconnected with the interests of his fellow-creatures, he knew no ambition. To him power had lost its evil allurements, and riches their degrading influence; and he so justly estimated the value of fame, as to regard it only when it echoed back the voice of his own pure and uncorrupted conscience. It is the interest as well as the duty of mankind to bestow upon characters like his the full measure of their grateful applause. The world has too long lavished upon its enemies the praises due to those who have truly and faithfully served it; and it is fitting that the gratitude of mankind should be at length directed to their real benefactors,—to those who, opening to them the gates of knowledge, and guarding for them the strongholds of liberty, find their noblest ambition gratified in the divine office of doing good.

## ABSTRACTS OF RECENT STATUTES.

### CORNWALL STANNARY COURT.

4 & 5 W. 4, c. 42.

This is entitled, "An Act to facilitate the taking of Affidavits and Affirmations in the Court of the Vice-Warden of the Stannaries of Cornwall," and passed on the 30th July, 1834. The act recites that, suitors and others having business in the Courts of the Stannaries, held by the Vice-Warden, can make affidavits or affirmations relating thereto before the Vice-Warden only; and it is expedient, and will be for the benefit of such suitors and others, that other persons as well as the said Vice-Warden have authority to take such affidavits or affirmations: It is therefore enacted,

1. That any commissioner of any of the superior courts of common law at Westminster, having by commission from such courts or any of them authority to take affidavits in matters relating to such Courts or any of them, may, without fee or reward, apply for and have, by commission from the said Vice-Warden, under the seal of the Stannaries kept by him, authority to take affidavits or affirmations in all suits and matters relating thereto brought into the Court of the

said Vice-Warden by way of appeal from the Courts of the stewards of the Stannaries; and that any Master Extraordinary of his Majesty's High Court of Chancery may, without fee or reward, apply for and have, by like commission from the said Vice-Warden, authority to take affidavits or affirmations in all other suits, petitions, or matters to be commenced or being in the Court of the said Vice-Warden; and that all and every person and persons wilfully swearing or affirming falsely in any affidavit to be made before any person so authorized to take affidavits or affirmations as aforesaid shall be deemed guilty of perjury, and be liable to the penalties of perjury, and be therefore prosecuted in any Court of competent jurisdiction.

2. That this act shall commence and take effect on the first day of October, one thousand eight hundred and thirty-four.

3. That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others.

### MAGISTRATES OF SCILLY AND CORNWALL.

4 & 5 W. 4, c. 43.

This is "an Act to authorize Persons duly appointed to act as Justices of the Peace in the Islands of Scilly, although not qualified by Law," and passed 13th August, 1834. It recites that the islands of Scilly in the county of Cornwall are situated at a considerable distance from the coast of the said county, and great inconvenience to the inhabitants of the said islands, and frequent delays in the administration of justice, arise by reason of there being no justice or justices of the peace resident in the said islands or any of them, or persons therein resident possessed of such qualification as is required by 5 G. 2, c. 18, & 18 G. 2, c. 20. And that it is expedient that justices duly appointed in and for the county of Cornwall should be authorized to act as justices of the peace within the said islands, although such persons should not be qualified according to the provisions of the said recited acts or either of them: It is therefore enacted,

1. That it shall be lawful for all persons who shall after the passing of this act be duly appointed in such and the same manner as other justices of the peace acting in and for the said county of Cornwall are now appointed to act as such justices of the peace in and for the said islands of Scilly, and in relation to all felonies, misdemeanors, offences and trespasses, and all other matters and things happening or arising in the said islands of Scilly in which justices of the peace have jurisdiction or authority as justices of the peace, without being qualified in respect of property, or taking the oath required as to such qualification, and without being subject to any penalties or forfeitures or disabilities in the said acts or either of them specified; any thing in the said acts or either of them to the contrary notwithstanding.

2. That all acts, matters, and things done by any such justice acting in and for the said

<sup>b</sup> Character of Fox, vol. ii. p. 683.



islands of Scilly in relation to the felonies, misdemeanors, offences, and trespasses, or other matters and things happening or arising within the said islands of Scilly, and within the jurisdiction or authority of justices of the peace, shall be good, valid, and effectual in law, to all intents and purposes, in the said county of Cornwall, as if such justices had been and were duly qualified according to the provisions of the said recited acts, and taken the oath in the said last-recited act specified, although such justices shall not be qualified in respect of property, and shall not have taken the oath relating thereto; any thing in the said recited acts or either of them to the contrary notwithstanding.

## PRODUCTION OF LESSOR'S TITLE.

Sir,

Referring to the Number for December 13th, p. 114, in which it is stated "that it still remains undecided whether a lessee can in equity as plaintiff call for the lessor's title," I beg to submit the following remarks upon this subject.

Can the owner of property having contracted to grant a lease, be compelled in equity to produce his title? It is rather extraordinary that this question, one which must have been so often a disputed point between the legal advisers of different parties, should never have been brought under the cognizance of any of our Courts in such a manner as to compel them to put an end to the contradictory opinions that have been formed upon it; yet although it has often been brought incidentally before them, the cases in which it was involved have always been decided upon some other point, so as not to render it obligatory on the presiding judge to settle this.

Numerous dicta are, however, to be found bearing upon this question, and upon these and those general principles which are the basis of all law, I trust I have been able to form a sound opinion upon this subject.

It may be admitted that upon the first introduction of leases, the intended lessee would not have been entitled to apply for the production of his landlord's title, but neither the tenure, nor the holder under it, were then considered of as much importance as they are now. Under the feudal system this description of tenure was of little or no value, and was held by men in the most abject state of subjection; but in the present day the case is very much altered. Estates of a leasehold tenure, in fact, though not in law, are often much more valuable, and would produce a much greater price in the market, than many freehold interests, on the sale of which there would be no dispute that the purchaser had a right to demand an inspection of the title. Copyhold tenures, in their origin, were of even less repute than leaseholds, yet it will not be denied that the purchaser of copyhold property may require the production of his vendor's title.

A tenant for a determinate number of years is now considered in the same light as a purchaser of freehold property, and is, in many of the cases in which the nature of the property in leaseholds is discussed, described as a purchaser *pro tanto*. When he agrees to pay rent and perform covenants, he does so on the understanding that he is to have possession of the property for which he has contracted, for a considerable period of time. Upon that understanding he pays a larger rent than he otherwise would have done; and as he considers himself the owner of the property for the period for which he has contracted, he often makes improvements for his own comfort and advantage, which he is not absolutely bound to do.

In *Fildes v. Hooker*, 2 Mer. 427, the Master of the Rolls said, "It may be a great inconvenience to a lessee for twenty-one years to be evicted in the middle of his term. That which at the commencement of the term was a lease at rack rent may, from various circumstances, become a beneficial interest before the end of it. The thing contracted for is not a *precarius enjoyment* from one year to another, but an absolute term for twenty-one years, of which the value depends on the certainty of its duration. I do not therefore see why a person bargaining for such an interest should be compelled to take it without title." If the lessee has not the right of inspecting his landlord's title, he may at any period be dispossessed of that property for which he has contracted, and upon which he may have expended large sums.

It is often stated, in discussions upon this point, to be the general understanding on sales of real property, that the title must be examined; but that upon the granting of leases such a thing is never thought of. I have considerable doubt as to the truth of this latter statement. In most written agreements for leases, a stipulation is made that the inspection of the lessor's title shall not be required: nearly all the printed forms have such a clause, and where the agreements are not in writing, the landlord can vacate them if the tenant demand to see his title. In all building leases and demises for long terms of years, where the principle is the same as in leases for twenty-one years, the title is as carefully examined as it would be on the purchase of a freehold interest. But this rule that a title may be demanded, does not merely depend upon the circumstance of its being the general understanding—it is not merely on account of its being the usual practice that a vendee has a right to inspect the muniments of his vendor. To use the words of Sir William Grant, in *Ogilvie v. Foljamb*, 3 Mer. 53, "A right to a good title is a right not growing out of the agreement between the parties, but which is given by law." In *Purves v. Rayer*, 9 Pri. 488.—Baron Richards said, "It is a general rule in equity, founded on principles of honesty and dictates of good sense, that if a person, generally speaking, offers any thing for sale, the vendee, or he who becomes the purchaser, is entitled to see that the vendor has it with the qualifications and in the way in which he, the

vendee understood that he bought it." Again, he says, "The principle applies to every thing, and there seems to me to be no sound reason why leaseholds should be an exception. If an estate of inheritance be sold, it is admitted on all hands that the vendor must produce his title; why then is a purchaser bound to take a lease for a term of years, in equity, or honesty, although after he have paid the purchase-money it may not last an hour?"

The case in which these remarks were made, was one in which leaseholds were purchased; but the principle of those remarks will equally apply to the question I am now considering: the difference between the two is merely one of amount. They are both purchases, *pro tanto*, the one of a term of years for a large sum of money; the other likewise of a term of years for a yearly rent, possibly, if not probably, a larger rent than would otherwise have been given.

In the case of *Waring v. Macreath*, Forr. Exch. Rep. 129, it was said, "There is no difference between the purchase of a leasehold interest and a fee-simple, the party having agreed to purchase that interest has a right to see whether it can be granted to him or not." These words may, with equal justice and truth, be applied to this question; the party who contracts for a lease has a right to see whether the owner of the fee has the power to grant it.

If it be objected, as it sometimes is, that the lessor might prejudice himself by allowing his title to be inspected, the answer is obvious; so he might, by producing his title to one who had contracted to purchase a part of his freehold property. He may prevent the necessity of an examination of his title by a stipulation in the agreement, and the only reason for his not doing so is, that it would have a tendency to lower the rent. But is an innocent person to suffer, because a lessor does not take due precautions? Leases for a length of time, which are of course taken upon the faith of having a good title to the possession, are seldom, I may say never, taken without considerable sums being expended in improvements upon the property, which will, at least, last during a portion of the term, and which will be lost to the tenant if his landlord has no title. Even in a mere farming lease it is, in most cases, to the advantage of the lessee to improve his property until he approaches near the expiration of his interest.

Every agreement ought to be equally binding on all the contracting parties. If he who had contracted to grant a lease was not obliged to allow his title to be examined, he would have a very unfair advantage over the person with whom he had contracted. A provident lessee would never accept a lease without first knowing what security he had for its continuance. In this case it would rest with the owner of the fee to rescind the contract, or compel its performance. If the agreement he had entered into was a beneficial one, he would allow; if, on the contrary, he could obtain more advantageous terms from some other person, he would refuse to allow his title to be inspected.

It may be urged that, in some instances, the purchaser of a leasehold interest, *already created*, cannot compel the production of the freehold title, and that therefore, reasoning from analogy, the intended lessee cannot compel the production of the freehold title of the grantor of the lease. This rule, however, only holds where the assignee cannot produce the freehold title, and is founded on the well known rule of Courts of Equity, that they will never exercise their authority in endeavouring to compel the specific performance of an impossibility, but will leave the plaintiff to his remedy at law; and Courts of Law never make any allowance for the benefit the complainant *might have* derived from his contract. The principle of this exception does not therefore apply to this question, there being no dispute as to the lessor's power to obtain access to his title-deeds.

Upon principle, therefore, I consider that the contractee would be entitled to a decision in his favour if he endeavoured to enforce the production of the title-deeds in a Court of Equity, and the authorities will quite bear me out in this opinion. The first of these, both in date and weight, is *Keach v. Hall*, 1 Douglas, 21, where Lord Mansfield is reported to have said—"Whoever wants to be secure when he takes a lease, should inquire after and examine the title-deeds. In practice, indeed, especially in the case of great estates, this is not often done, because the tenant relies upon the honour of his landlord; but whenever one of two innocent persons must be a loser, the rule is *qui prior est tempore, potior est jure*. If one must suffer, it is he who has not used *due diligence* in looking into the title." This *dictum* is entitled to considerable weight, not merely from the unlimited manner in which the doctrine is laid down, but as coming from one of the most eminent judges that ever graced the English bench. The opinion, too, was strictly applicable to the case before the Court, which was a question of possession, raised in an action of ejectment between the mortgagee and the lessee of the mortgagor.

It has been objected that this *dictum* of Lord Mansfield's was a mere declaration that the lessee ought not to take a lease without first inspecting the title of the owner of the freehold, and does not imply that he had a right to demand such an inspection. If this objection could be supported, the conclusion which must inevitably flow from it is this—that one of the contracting parties might rescind his contract, because the other would not comply with a demand he had no right to make. It appears to me (and in this opinion I am borne out by Sir E. Sugden) quite clear, that Lord Mansfield considered that the intended lessee *had a right* to demand an abstract of the title of his lessor previous to executing the lease.

In *White v. Foljamb*, 11 Ves. 337; *Fildes v. Hooker*, 2 Mer. 427; *Purves v. Rayer*, 9 Pri. 488; although in these cases the vendor was plaintiff, the language of the Judges clearly shews that it is a settled point that the vendor of a leasehold interest

may be compelled to produce his own title from the time the lease was created. If then a lessee is a purchaser *pro tanto*, and the vendor of a leasehold interest can be compelled to deliver an abstract, why should not the owner of freehold property, who has contracted for a lease, be compellable to produce his title?

In *Guyllym v. Stone*, 3 Taunt. 432, although there are certainly some *dicta* of common law Judges, which appear to militate against my opinion, yet viewing the whole of the proceedings, both at law and in equity, it appears to me that so far from being adverse to the doctrine I advance, it is decidedly favorable to it. In the Suit in Equity, the title was referred to the Master, and found bad; leave was given to commence an action at law for damages, and on the trial nominal damages were given, with leave to move a non-suit. On the rehearing, the description of action pursued was disapproved of, and from the expressions of the Judges it may be inferred, that if another mode had been pursued, it might have produced a very different result. The object, too, of the plaintiff in that case was to recover the expenses he had foolishly incurred by taking possession previously to obtaining a lease.—*Temple v. Brown*, 6 Taunt. 60, was never decided. It cannot be considered to have decided the question, said Lord Denman, in *Souler v. Drake*, 3 N. & M. 40, and the remarks of the different Judges were made at N P. Besides the authority which the opinion of Ch. J. Gibbs might otherwise have is very much lessened by the consideration that upon the case again coming before the Court, it declined to give any opinion upon the point.

Admitting, however, that some of the Judges in *Temple v. Brown*, and *Stone v. Guyllym*, were individually of opinion that no title could be demanded, few will consider that their opinion is entitled to equal weight with that of Lord Mansfield, especially as the sentiments of all the modern Equity Judges appear to lean in an opposite direction. Sir William Grant, indeed, treated this as an undecided point, and said he should regret being under the necessity of determining it; but he clearly thought that specific performance of the agreement to purchase a leasehold interest; could not be enforced without the production of the title. Upon the same principle, a person who contracts for a lease will not be obliged to execute it unless he have an opportunity afforded him of inspecting the title; and if so, he must have a right to demand an abstract, unless, as before observed, he may vacate his agreement, because the lessor will not comply with demands which he has no right either in law or in equity to make.

In *Warren v. Richardson*, 1 Young 1, where there was an agreement for a lease for twenty-one years, and the defendant entered before the lease was executed, and afterwards refused to fulfil his agreement until a title was produced, the Lord Chief Baron, in giving judgment, said, "The Court was of opinion that the defendant had waived what otherwise he would clearly have had a right to, an enquiry into the

plaintiff's title, that is, into his power to make a valid lease according to the agreement: in other words, to put upon the plaintiff the burthen of shewing his title, and proving it to be a safe one." This case proves that the intended lessor could not compel the intended lessee to take a lease without showing his title; and upon the whole, therefore, I consider that both upon principle and authority such lessee would be entitled to demand an inspection. W. Y. C.

## APPOINTMENT OF COUNTRY COMMISSIONERS IN BANKRUPTCY.

From a Pamphlet of Mr. William Fisher (of Chancery-lane,) we select the following statements of the great inconvenience which attends the present practice of nominating a very limited number of Country Commissioners in Bankruptcy:—

Until about the year 1800, country commissions were directed to *five solicitors* only. In that year an order was made that in future *two barristers* and *three solicitors* should be named, and that one of the former should be of the quorum. This continued until a recent act of parliament, which directed *both barristers* to be summoned by the solicitor, and they have since generally acted with one solicitor, when it suited their convenience to attend, and which, in all important commissions, has invariably been the case. Up to the passing of the Bankruptcy Court Act, the solicitor to the petitioning creditor had always named the commissioners, subject to certain regulations; but by the fourteenth section of that act, it is enacted, that the judges who go the several circuits in England and Wales, may be directed by the Lord Chancellor, from time to time, to return to him the name of such number as he shall think fit to require, of barristers, solicitors, and attorneys, practising in the counties to the said circuit belonging, and upon such persons being returned and approved by the Lord Chancellor, the fiat or fiats not directed to the Court of Bankruptcy, shall be directed to some *one or more* of such persons, to act as commissioners of bankrupt according to the districts, &c., and to no other person. Previous to this act, the attorney for the petitioning creditor, in naming commissioners, consulted their convenience, as well as that of his client, himself, and the creditors at large, so as to save all the expence, delay, and inconvenience of travelling possible. The fees to the commissioners and solicitors are fixed by statute, and they cannot take more under severe penalties.

The late Lord Chancellor has named lists of commissioners for the country, but he has been so niggardly of them in point of number, that great injustice has been done to the community at large, as well as the great body of the profession. It is very well known that the judges returned to the Chancellor the names of

a great number of very respectable men, as properly qualified to act as commissioners.

The writer then proceeds to notice, as a striking instance, the populous and extensive county of York, where only *forty-three* commissioners are named, and the *lists* are fixed at *Doncaster, Hull, Halifax, Leeds, Whitby and Scarbro', Northlufferton, York and Sheffield*, so that in the west riding alone, there are upwards of *twenty market towns*, and thickly populated neighbourhoods to most of them, *without any list at all, at or near to them*. All the way east to west from *York to Manchester*, there are only the *lists at Leeds and Halifax*, a distance in length of upwards of *seventy miles*, to do all the bankruptcy business of that exceedingly large, manufacturing, and trading district. In the whole breadth of that part of the county, north to south, from *Halifax to Sheffield*, (near *forty miles*;) there is no list *at all*, nor from *Leeds to Sheffield*, about the same distance. Thus overlooking the *new boroughs of Huddersfield and Wakefield*, which lie directly between these points. The market towns of *Wakefield, Huddersfield, and Bradford* have only *one* commissioner each, the former attached to a *Leeds* list, a distance of ten miles, and the two latter to that of *Halifax*, a distance of eight or ten miles from the residence of these commissioners. The nearest list to *Halifax* is at *Leeds*, a distance of nearly *twenty miles*.

In former times a commission was worked in the most convenient place, at little or no expence in travelling, and with great accommodation to the creditors and other parties concerned; but now just look at the consequences of a solicitor with his client, bankrupt, witnesses, and creditors, all residing in a town of large trading business like *Huddersfield, Wakefield, or Bradford*, having to run up and down a county, first to fix with the scattered commissioners a time for opening the fiat, and afterwards to attend the meetings under it at a great distance, and this in addition to the necessary travelling and extra expence of the commissioners themselves, all which must and does come out of the bankrupts' estate, or the pockets of individuals!!

It has been said that such a small number of appointments was made, not for the benefit of the creditors, whose interest one should have thought would have been first considered, but to make it *worth the while* of the selected few to give their attention as commissioners.—Surely this is a very unsatisfactory reason, for if a *greater* number of appointments could have been made of equal respectability, and such greater number could do the business *better and more cheaply and conveniently* to the creditors at large, (which no one can doubt,) clearly such appointments should have been much more abundant, even if any *selection* is fair and proper as regards the claim of the profession at large.

But the writer denies the *right of selection and exclusion*, altogether, and contends that if such a system is to be permitted, acts may be passed at no distant period, *limiting* the

number of attorneys by such appointments, who shall prepare conveyances or mortgages, bring or defend actions or suits, or do a particular branch of business at law or in equity, and so to extinguish them altogether as general practitioners, masters extraordinary, and as commissioners in taking answers in chancery, examination of witnesses, or any and every other matter of professional business, hitherto their legal right. It is submitted as indisputably clear, that every respectable solicitor, (at all events) of a certain standing, ought still to be qualified to act as a commissioner of bankrupts in the country.

The writer then states some instances of the actual working within his own knowledge of the present practice. A solicitor residing at *Huddersfield* issued a fiat lately against a trader residing at *Penistone*, a market town about fourteen miles from *Huddersfield*, and the same distance from *Sheffield*. All the *creditors* lived at *Huddersfield*, where formerly the commission might have been worked, and which, according to all reason, should still be the case. The list of commissioners at *Sheffield* is the nearest to *Penistone*, and to that list therefore the fiat must be and was directed; expedition was of importance, and the solicitor therefore had to send a clerk near *thirty miles*, at a loss of *two days* in time, besides travelling expences, to arrange the opening of the fiat, which the commissioners fixed at *Penistone*.—They consequently travelled *fourteen miles* to *Penistone*, and the solicitor, his clerk, and the *petitioning creditor*, as far to meet them.—When they got to *Penistone*, one of the commissioners was laid up with the gout at his own house, *six miles* from *Sheffield*, and to this point, therefore, the other commissioners, solicitor, clerk, creditors, and witnesses went. A day was thus consumed in getting to the place of business, and, in fact *two days* were occupied in opening a fiat which would have been done in *half an hour at Huddersfield*, and at the expence only of *one person travelling fourteen miles*. The meetings under the fiat were fixed at *Sheffield*, and the creditors, the solicitor, clerk, &c. had, up to the bankrupt's examination, *two other journeys* of near *thirty miles each way*, occupying *two days each*. Now before a final dividend can be made in this bankruptcy, a sum not far short of *one hundred pounds* must be spent in *extra travelling* alone, and that exclusive of *loss of time*, while the business is no better done than it might have been at *Huddersfield* conveniently to *every body*, and all this money and time saved, the solicitor's bill for time and expences being also materially increased into the bargain. Is not this *cheap law and justice at a man's door* with a vengeance (?)!!!

Another case was as follows: In the long vacation of 1833, a trader of Nottingham had got into debt there to a large amount. He left that place and removed his stock under the pretence of settling in London, but very soon afterwards his bills were returned, and it was then discovered that in fact he had run away

from his creditors. He had shops at Birmingham and Yarmouth, besides his residence and warehouse at Nottingham conducted by agents there. The creditors took alarm and went in different directions, to London, Liverpool, Birmingham, and Yarmouth, after their debtor, under a notion that he was about to leave the country. They found some goods but not the man, and a fiat seemed the only chance to secure what could be discovered. They wished for expedition sake to have a *town fiat*, but as all the *creditors* were at Nottingham, that could not be obtained: a fiat was therefore sent to the *list* at Nottingham; every exertion was made for *ten days* to get three commissioners together to open the fiat, but without effect; one of them had lately had a silk gown given him, and therefore could not act as a commissioner, the other barrister was from home, another commissioner at Scarborough, one in London, and the fifth only, was to be met with in Nottingham. The creditors all this time were in great anxiety, and at great trouble and expence. As nothing could be done on the country fiat, they applied to one of the judges of the court of review, who happened to be in town, for liberty to issue a town fiat, and which, under the circumstances, and after an *application* to the court, subjecting the estate to fees, orders, supersedeas, *new fiat*, &c. was granted; thus a delay of a *fortnight* and an *extra expence* to the creditors of near 150*l.* were incurred, and probably a loss of a considerable amount of the bankrupt's effects.

It is therefore submitted to the Lord Chancellor, that the old rule of naming country commissioners, should be revived, or at all events, a *SUFFICIENT number* of commissioners appointed in every town in the kingdom, where respectable men are to be found, and the working of a fiat in bankruptcy may by possibility be required, so that the injured creditors and the profession shall not suffer as they now do.

## COUNTRY COMMISSIONERS IN BANKRUPTCY.

### YORKSHIRE.

#### Doncaster.

Francis Maude, Esq.  
Henry Taylor, Esq.  
Thomas Blackwell Mason, Gent.  
William Shearburn, Gent.  
James Falconar, Gent.

#### Hull.

Andrew Fitzgerald Reynolds, Esq.  
Joseph Smyth Egginton, Esq.  
Thomas Thompson, Gent.  
George Codd, Gent.  
John Earnshaw, Gent.

#### Halifax.

Thomas Hudson Bateman, Esq.  
George Stansfield, Esq.  
James Stansfield, Gent.

Samuel Hailstone, Gent. (of Bradford.)  
William Jacomb, Gent. (of Huddersfield.)

#### Leeds.

##### List 1.

Francis Maude, Esq.  
Thomas Horncastle Marshall, Esq.  
Thomas William Tottie, Gent.  
James Richardson, Gent.  
Edwin Eddison, Gent.

##### List 2.

George Wailles, Esq.  
Robert Hall, Esq.  
Matthew Bloome, Gent.  
Thomas Foljambe, (of Wakefield,) Gent.  
Thomas Everard Upton, Gent.

#### Whitby and Scarborough.

Charles Heneage Elsley, Esq.  
Henry Belsher, Gent.  
Joseph Hunter, Gent.  
Robert Preston, Gent.  
Edward Sedgfield Donner, Gent.

#### Northallerton.

Charles Heneage Elsley, Esq.  
Thomas Colling, Esq.  
Ottivell Tomlin, Gent.  
William Raper P'Anson, Gent.  
George Allison, Gent.

#### York.

William Blanshard, Esq.  
Eustachius Strickland, Esq.  
John Brook, Gent.  
James Russell, Gent.  
John Seymour, Gent.

#### Sheffield.

James Rimmington, Esq.  
George William Tireman, Esq.  
Charles Brookfield, Gent.  
Robert Rodgers, Gent.  
James Wheat, Gent.

## REMARKABLE TRIALS.

### JOHN CHISLIE FOR MURDER.

1689.

The following case is additionally remarkable, from the use of the torture:—

John Chislíe, of Dalry, was indicted for the murder of Sir George Lockhart, Lord President of the Court of Session. On the 31st of March, 1689, he was brought to trial before the Lord Provost of Edinburgh; on the next day the brother and nephew of the deceased produced in Court an Act of the Estates of Parliament, to the following effect:

That the Estates have considered the supplication of the friends of the deceased Sir George Lockhart, for granting warrant to the magistrates of Edinburgh to torture John Chislíe, of Dalry, perpetrator of the murder, and William Calderwood, writer in Edinburgh, an accomplice; therefore, in respect of the notoriety of

the murder, and of the extraordinary circumstances attending it, the Estates appoint and authorise the Provost, and two of the Baillies of Edinburgh, and likewise the Earl of Errol, Lord High Constable, and his deputies, not only to judge of the murder, but to proceed to torture Chislie, to discover if he had any accomplices in the crime: and they appointed two of each bench, viz. the Earls of Glencairn and Eglington; Sir Patrick Ogilvie, of Boyne; Sir Archibald Murray, of Blackbarony; Sir John Dalrymple, younger, of Stair; and Mr. William Hamilton, advocate, assessors to these judges. The Estates at the same time declare, that this extraordinary case shall be no precedent to warrant torture in time coming, nor argument to ratify it as to the time past.

The Lord Provost then entered a protest, that this act of the Estates of Parliament should not infringe the ancient liberties of the city; and Mr. David Drummond, advocate, one of the Earl of Errol's deputies, protested, that the Lord High Constable's absence should not affect his right to judge in the like cases, the murder having been committed during the meeting of the Estates. Being desired to concur with the magistrates in sitting on this trial, he refused to sit, unless the Earl of Errol, or his deputies, were sole judges.

The prisoner was then put to torture, and declared, that he was not advised to the assassination of Sir George Lockhart, by any person whatever; that when, at London, he told James Stewart, advocate, that, if he got no satisfaction from the President, he would assassinate him; and told the same to a person there of the name of Callender, and to Mr. William Chislie, his uncle. He confessed that he charged his pistol on Sunday morning, and went to the new kirk, and, having seen the President coming from the church, he went to the close where the President lodged, followed him, and, when just behind his back, shot him: that he was satisfied when he heard of the President's being dead; and, on hearing it, he said, '*he was not used to do things by halves.*' He also confessed, that, when at London, he walked up and down Pall-Mall with a pistol beneath his coat, lying in wait for the President.

The indictment set forth, that assassination, murder, and manslaughter, were contrary to the laws of God, nature, nations, and the laws and acts of Parliament of this kingdom; that, nevertheless, the prisoner had, of forethought felony, without the least provocation, murdered Sir George Lockhart in the manner already mentioned: that the prisoner was caught *red-hand*, (a term in the Scottish law, signifying a criminal's being caught in the fact), by a multitude of witnesses, before whom he boasted of what he had done, as if it had been some grand exploit: by all which he was guilty of murder, or at least was *art and part* accessory to the same; for which he ought to be punished with death, and his moveables confiscated.

The prisoner judicially confessed the crime libelled, and declared that he committed the

murder, because he thought the deceased had given an unjust sentence against him. Being asked, 'if it was not a sentence pronounced in favour of his wife and children for their alimment? he declared he would not answer to that point, nor give any account thereof.'

James Stewart, advocate, deposed, that, in the month of September or October preceding, the prisoner discoursing with him concerning the injustice done to the prisoner, in a decret-arbitral, pronounced by Sir George Lockhart and Lord Kemney, in favour of his wife and children, for an alimment, said, he was resolved to go to Scotland before Candlemas, and kill the President; to which the witness answered, it was the suggestion of the devil, and the very imagination of it a sin before God. To this the prisoner replied, 'Let God and me alone; we have many things to reckon between us, and we will reckon this too.' The witness told this to many, and understood that the President was informed of the prisoner's menaces, but despised them.

Mr. William Chislie, writer to the signet, deposed, that he had not seen the prisoner since April, 1668, who then expressed his resentment against Sir George Lockhart; threatening to assassinate him for having decreed an alimment of 1700 merks yearly to the prisoner's wife and ten children. The witness told the President of it, but he despised the threat.

Mr. Daniel Lockhart, advocate, and Mr. Alexander Walker, student of divinity, saw the prisoner shoot the deceased: they seized him; and the latter of these witnesses assisted in carrying him to the guard. When seized, the prisoner said, 'he had done the deed, and would not fly; and that was to learn the President to do justice.'

Sir David Hay, doctor of medicine, was going to visit the President's lady. As he entered the close, he saw the President stagger and fall to the ground. He bled at the mouth; was carried into his house, laid upon some chairs, and immediately expired. He saw John Baillie, surgeon, probe the wound. The ball went in at the back, and out at the right breast.

The Jury found, by the prisoner's judicial confession, that he was guilty of the murder of Sir George Lockhart, &c.; and by the deposition of witnesses, that he was guilty of '*murder, out of forethought felony.*'

The Lord Provost and Baillies of Edinburgh sentenced the prisoner as follows:—

That he be carried on a hurdle from the tolbooth of Edinburgh, to the market-cross, on Wednesday, the 3d of April, inst.; and there, between the hours of two and four of the afternoon, to have his right hand cut off alive, and then to be hanged upon a gibbet, with the pistol about his neck, with which he committed the murder. His body to be hung in chains between Leith and Edinburgh; his right hand fixed on the West Port; and his moveable goods to be confiscated.

## LEGAL ANTIQUITIES.

## ON THE PROPOSED ABOLITION OF GRAND JURIES.

*To the Editor of the Legal Observer.*

Sir,

A man of ill reputation was compelled to undergo a triple ordeal, in cases where a single one sufficed for persons of credit; a provision rather inconsistent with the trust in a miraculous interposition of providence, which was the basis of that superstition. And the law of frank-pledge proceeded upon the maxims that the best guarantee of everyman's obedience to the government, was to be sought in the confidence of his neighbours. Hence while some compurgators were to be chosen by the sheriff, to avoid partiality and collusion, it was still intended that they should be residents of the vicinage, witnesses of the defendant's previous life, and competent to estimate the probability of his exculpatory oath. For the British strangers, in the canon before quoted, were certainly the original natives, more intermingled with their conquerors, probably, in the provinces north of the Humber than elsewhere, and still denominated strangers, as the distinction of parts was not done away. If in this instance we do not feel ourselves warranted to infer the trial by jury, still less shall we find even an analogy to it in an article of the treaty between England and Wales, during the reign of Ethelred, II. "Twelve persons skilled in the law, (*lahmen*), six English and six Welsh, shall instruct the natives of each country, on pain of forfeiting their possessions; if, except through ignorance, they give false information."<sup>a</sup> This is obviously but a regulation intended to settle disputes among the Welsh and English, to which their ignorance of each other's customs might give rise.

By a law of the same prince, a Court was to be held in every wapentake, where the sheriff and twelve principal thanes should swear that they would neither acquit any criminal, nor convict any innocent person.<sup>b</sup> It seems more probable, that these thanes were permanent assessors to the sheriff, like the scabini so frequently mentioned in the early laws of France and Italy, than Jurors indiscriminately selected. This passage, however, is stronger than those which have been already adduced; and it may be thought, perhaps with justice, that at least the seeds of our present form of trial are discoverable in it. In the history of Ely, we twice read of pleas held before twenty-four Judges in the Court at Cambridge; which seems to have been formed out of several neighbouring hundreds.<sup>c</sup>

But the nearest approach to a regular jury, which has been preserved in our scanty memorials of the Anglo-Saxon age, occurs in the

history of the monastery of Ramsey. A controversy relating to lands between that society and a certain nobleman, was brought into the county-court; when each party was heard in his own behalf. After this commencement, on account probably of the length and difficulty of the investigation, it was referred by the court to thirty-six thanes, equally chosen by both sides.<sup>d</sup> And here we begin to perceive the manner in which those tumultuous assemblies, the mixed bodies of freeholders, in their county-court, slid gradually into a more steady and more diligent tribunal. But this was not the work of a single age. In the Conqueror's reign, we find a proceeding very similar to the case of Ramsey, in which the suit had been commenced in the county-court before it was found expedient to remit it to a select body of freeholders. In the reign of William Rufus, and down to that of Henry II., when the trial of writs of right by the grand assize was introduced, Hickeys has discovered other instances of the original usages.<sup>e</sup> The language of Domesday-day Book lends some confirmation to its existence at the time of that survey; and even our common legal expression of trial by the country. "(I appeal to, or I throw myself upon God and my country)," seems to be derived from a period when the form was literally popular.

In comparing the various passages which I have quoted, it is impossible not to be struck with the preference given to twelve, or some multiple of it, in fixing the number either of judges or compurgators. This was not peculiar to England; Spelman has produced several instances of it in the early German laws. And that number seems to have been regarded with equal veneration in Scandinavia.<sup>f</sup> It is very immaterial from what caprice or superstition this predilection arose; but its general prevalence shews that in searching for the origin of trial by jury, we cannot rely for a moment upon an analogy which the mere number affords. I am induced to make this observation, because some of the passages which have been alleged by eminent men, for the purpose of establishing the existence of that institution before the conquest, seem to have little else to support them.

ASPIRO.

SELECTIONS  
FROM CORRESPONDENCE.  
No. LXXXVII.

## ATTORNEYS' CERTIFICATE DUTY.

Sir,

Having repeatedly seen in your valuable publication, notices respecting the unjust tax with which attorneys are at the present day

<sup>a</sup> *Leges Ethelredi*, p. 125.<sup>b</sup> *Ib.* p. 117.<sup>c</sup> *Hist. Eliensis*, in *Gale's Scriptores*, t. 3, pp. 471—478.<sup>d</sup> *Hist. Ramsay*, *ib.* p. 415.<sup>e</sup> *Hickeys Dissertation Epistolaris*, p. 33—36.<sup>f</sup> *Spelman's Glossary*, voc. *jurata*; *Du Cange*, voc. *Wembda*. *Edin. Review*, vol. 31, p. 115.

barthened, permit me to offer a few remarks on the subject.—In the first place, the tax is not only unjust, because it is not on a graduated scale; but also, because in many instances, it is made payable in respect of that from which a man receives no benefit; for instance, a young friend of mine, who was admitted in the year 1817, did not take out his certificate till the year 1821, since which period he has regularly paid the annual tax of 12*l.*, although from the time of the first payment, he has not earned 5*l.* It does not signify, whether his deficiency of profit arises from inability, indisposition, or disinclination to work at his professional labours; why should he be compelled to pay 12*l.* when he does not earn a tithe of it? Why should he be taxed in respect of that from which he derives no profit? On the other hand, it will not do for him to cease to take out this symbol of oppression; for in that case, should any trifling thing be put in his way, from which he might glean a pound or two, he must either run the risk of paying a penalty of 50*l.*, or drive away his client, by telling him, that it is impossible for him even to issue a writ, until he has given one term's notice, paid up all arrears, together with a penalty of 5*l.*, been duly re-admitted in one of the Courts at Westminster, and obtained and entered his certificate. Is not this scourge sufficient to drive a needy man (of whom there are many in the profession) to every species of knavery and pettyfogging to which a human being is capable of stooping? Is not this exaction by the legislature, similar to that of those degraded wretches among the lower classes of society, who send their children into the streets, commanding them to bring home a certain sum before the evening; and is it not productive of a similar result, namely, that if they cannot get it honestly, they will get it dishonestly?

We hear other classes of the community growling and complaining at having to pay a tithe; what would they say had they to pay a hundred fold more than the profits they derive, or have any chance of deriving; under a threat, that in case of default, they should be compelled to relinquish their avocation altogether? Let the junior branch of attorneys have the clear light of common sense and sound judgment shed on their present state and condition, and see if they will not stand forth as the most aggrieved and oppressed of the community.

#### ANOTHER OF THE OPPRESSED.

#### DECISIONS ON THE NEW PLEADING RULES.— PAYMENT OF MONEY INTO COURT.

The form of the plea you state to be, "that the plaintiff has not sustained damages," or "the defendant is not indebted to the plaintiff" "to a greater amount than the said sum, &c., in respect of the cause of action in the declaration mentioned." I should conceive that this would be held to be an admission of the cause of action, in the same manner as allowing judgment by default, and that the plaintiff

would not have to prove his cause of action, but merely that the damages or debt did exceed the sum paid into Court. I believe it is a principle in pleading, that what is not traversed or denied, is admitted. This would produce the same result if the form of plea were not so explicit. T. T. T.

#### HUSBAND.—SEPARATION.—NECESSARIES.

The extract by "CIVIS," p. 104, from Mr. Chitty's General Practice, is incorrect. The following are the words of that learned author, viz. "When once the contract of marriage has been solemnized, it is not legally competent to either party to bind themselves by a deed of separation; and no legal separation can take place except by act of parliament. And though it has been frequently decided otherwise at law, it appears to have been settled, by the decision of the House of Lords, that at least a *prospective* deed of separation, (except so far perhaps as it may provide for children,) is invalid, and may be set aside or treated as void. It is necessary however, to observe, that, notwithstanding such decision in the Lords would seem to render invalid any deed *encouraging* separation between man and wife, yet it was subsequently considered in the court of King's Bench, that that decision only applies to *prospective* separation, and not to *immediate* separations; but there seems no sound reason for that distinction."—Vol. 1. p. 58. 2d ed.

LEGIS STUDIOUS.

#### PRACTICE.—TOWN ARREST.

In vol. 9. p. 141. of "The Legal Observer," H. G. S. observes, "that on a town arrest, a plaintiff would be enabled to attach the Sheriff, if bail were not put in within the eight days allowed by the act." This opinion, although kindly volunteered, is incorrect, which will on very little reflection be perceived.—The form of the writ of *capias* in 2 W. 4. c. 39, requires that within eight days after execution, *inclusive* of the day of such execution, the defendant should cause special bail to be put in for him. A defendant therefore being arrested on the 1st. must, (to prevent proceedings being taken upon the bail bond or against the Sheriff,) put in special bail on the 8th. Let us see how the case would be then with regard to the rules to return the writ and bring in the body. The rule to return the writ being served on the 1st, would expire on the 5th, because by R. G. 8. H. T. 2. W. 4, one day is *inclusive* and the other *exclusive*.—The Sheriff has the whole of the 5th to return the writ;—the rule to bring in the body, being therefore served on the 6th, would expire on the 10th, and no proceedings could be taken on the bail bond until the 11th (R. G. 22, H. T. 2 W. 4.), which would be *three days* beyond the time allowed by the act for putting in special bail, as we have shewn.

It may not perhaps be considered tedious to observe that, in addition to no advantage being derived from adopting the course pointed out by H. G. S. as to obtaining a rule to return



the writ on the day of arrest, and following the same up by a rule to bring in the body,—a plaintiff would by such course be prevented, in default of special bail on the 8th, from proceeding on the bail bond or against the Sheriff, until the 11th; and by R. G. 2 H. T. 2 W. 4. the defendant would not be liable to pay to the plaintiff any costs which might be incurred by him during the first four days after arrest.

N. G.

### PUBLIC RECORDS, JUDGES' CHAMBERS, &c.

In order to continue the attention of our readers to the important subject of improving the Courts and Law Offices, we extract the following remarks from a work by Mr. W. Wickens, on the improvements necessary for properly conducting the business of legislation.

"The safe preservation of public Documents that are of great moment, will be seen to be a matter of far more pressing duty, than any one of the Undertakings we have been particularizing. The Records of our Courts of Law, Blackstone describes as Documents "of high and super-eminent authority;" and yet all London knows that these Documents—of such high and super-eminent authority, were for years—next to houseless;—that ever since the removal of the old Courts—a period of five or six years, the Records had no better accommodation than a rude wooden shed which encumbered Westminster Hall: and in which, as was observed by Sir James Scarlett, in Parliament, it being necessary to consult them by the light of candles, they were in hourly danger of being destroyed by fire.

"Almost at the commencement of the career of our Metropolitan Improvements, a statement was made on high authority, averring the constant risk of fire, to which the valuable Contents or Archives of the Herald's College, were exposed, owing both to the situation and construction of that edifice.

"Inconvenience far exceeding any which Majesty has suffered at St. James's, or Buckingham House—which the functionaries of the Law had formerly to complain of at Westminster Hall—which the Lords of the Council could ever pretend to have been subjected to, in their previous Offices—Inconvenience, indeed, in its very climax, has for a series of years been sustained by the House of Commons, in nearly the whole of its interior movements or operations. We have depicted in the early part of this Work the difficulties—the exasperating difficulties, to which the House is exposed by the dearth of Committee-rooms; and it is reduced to nearly equal straits, as it regards accommodations for its Library, Journals, Reports, and other innumerable Papers, incidental to its multifarious vocations. At present, as many of these Books, Papers, &c. as there is room for, are stowed away in

nothing better than Closets, Chambers, Presses, and Passages, about the House; and those of them that room—even of this miserable nature—is not to be found for, are deposited at private Houses in the neighbourhood, or are kept in store at the Printer's—subject of course to double risks from fire, depredations and other untoward incidents.

"Though Commissions of a public and most important nature are so often appointed at the instance either of Parliament or the Government, no domicile for them, or convenience of any kind exists;—a fact which was particularly spoken of and lamented by Sir Robert Peel.

"The loudest, and there is reason to believe, the most justly founded complaints have been made of what are called—the Judge's Chambers; which are to all intents and purposes, so many Courts of Justice, and which, from the descriptions of them that have been given to Parliament, seem to be scarcely superior, in point of space or accommodation, to dog-kennels."

### MISCELLANEA.

At this season of the year, we make room for the following:

#### ADVICE TO PURCHASERS.

In the "Purchaser's Pattern," by Henry Phillippes, published in 1654, (noticed in Mr. Cripp's Conveyancer's Guide,) is the following advice to purchasers of estates:

"First, see the land, which thou intend'st to buy,  
Within the seller's title clear doth lie;  
And that no woman to it doth lay claim,  
By dowry, jointure, or some other name  
That it may cumber. Know if bond or free  
The tenure stand, and that from each feeoffee  
It be released. That the seller be so old,  
That he may lawful sell, thou lawful hold.  
Have special care that it not mortgaged be,  
Nor be entailed on posterity:  
That if it stand in statute, bound or no,  
Be well advis'd what quit rent out must go;  
What custom—service hath been done of old,  
By those who formerly the same did hold.  
And if a wedded woman put to sale,  
Deal not with her unless she bring her male,  
For she doth under covert barren go,  
Although sometimes some traffic see (we know).  
Thy bargain being made, and all this done,  
Take special care to make thy charter run  
To thee, thine heirs, executors, assigns,  
For that beyond thy life securely binds.  
These things foreknown and done, you may prevent  
Those things rash buyers many times repent:  
And yet when as you have done all you can,  
If you'll be sure deal with an honest man."

#### POETICAL WILL.

The following is a copy of the will of the late Poet of the Six Clerks' Office, dated 13th December, 1804:

"Perhaps I die not worth a groat,  
But should I die worth somewhat more,

Then I give that and my best coat,  
And all my manuscripts in store,  
To those who will the goodness have  
To cause my poor remains to rest  
Within a decent shell and grave—  
This is the will of Joshua West.

" JOSHUA WEST.

" Witnesses,

" R. Mills,

" J. A. Berry,

" John Baines."

## LIST OF NEW PUBLICATIONS.

Reports of Cases in the Court of King's Bench, Trinity Term, 4 W. 4. By S. V. Neville and W. M. Manning, Esqrs. Vol. 3. Part 4. Price 5s. 6d.

Reports of Cases in the Exchequer of Pleas, Hilary Term, 4 W. 4. By R. P. Tyrwhitt, Esq. Vol. 4. Part 2. Price 7s.

Law and Practice of Elections, with recent Decisions and Cases. By W. Rogers, Esq. 3d edit. Price 1l.

Practical Precedents in Pleading, prepared in accordance with the New Rules and Statutes; with Practical Directions. By C. Petersdorff, Esq. Price 15s. bds.

## WORKS PREPARING FOR PUBLICATION.

Early in 1835 will be published, Memoirs of the Life, Character, and Writings of Sir Matthew Hale, knight, Lord Chief Justice of England. By J. B. Williams, Esq. LL.D. F.S.A. Embellished with a full length Portrait, from an Original Picture in possession of the Family.

## BANKRUPTCIES SUPERSEDED.

From Nov. 21, to Dec. 16, 1834, both inclusive, with Dates when gazetted.

Smith, Simon, (Fiat issued in the name of Samuel Smith,) of King William Street, Saddler and Harness Maker. Nov. 23.

Salthouse, Wm., Poulton, Lancaster, Merchant. Dec. 5.  
Brooks, James, Wells, Somerset, Mercer & Draper. Dec. 5.  
Mellany, John, Ross, Hereford, Apothecary & Druggist. Dec. 5.

## BANKRUPTS.

From Nov. 21, to Dec. 16, 1834, both inclusive, with Dates when gazetted.

Abraham, Abraham Eliah, Exeter, Optician. *Spyer*, Broad Street Buildings; *Turner*, Exeter. Nov. 28.

Atkin, John, Bridgewater Square, London, Stationer. *Burritt & Co.*, Lothbury; *Clark*, Off. Ass. Dec. 2.

Ashworth, Sam., Houghton Hall, near Denton, Manchester, Hat Manufacturer. *Adlington & Co.*, Bedford Row; *Lea*, Manchester. Dec. 2.

Alders, n, Thompson, Rufford, Lancaster, Innkeeper. *Armstrong*, or *Todd*, Preston; *Chester*, Staple Inn. Dec. 5.

Ambercrombie, Charles, Liverpool, Merchant. *Adlington & Co.*, Bedford Row; *Thompson*, or, Messrs. Cramp, Liverpool. Dec. 16.

Brooks, Wm., New Street Square, Fetter Lane, Lamp Manufacturer. *Groom*, Off. Ass.; *Jones*, King's Arms Yard. Nov. 21.

Burnard, Martha Elizab., Bideford, Devon, Dealer. Messrs. *Law*, Barnstaple; *Carter & Son*, Bideford. Nov. 21.

Bell, Geo., Chertsey, Surrey, Tailor. *Edwards*, Off. Ass.; *Richardson*, Ironmonger Lane. Nov. 28.

Bradley, Benj. and Robert Cattell, White Hart Court, Lombard Street, Wine Merchants. *Belcher*, Off. Ass.; *Wadson*, Austin Friars. Nov. 28.

Bray, Aaron, Red Lion Yard, Holborn, Horse Dealer. *Green*, Off. Ass.; *Mayhew & Co.*, Carey Street, Lincoln's Inn Fields. Nov. 28.

Brown, John, Wapping Wall, Middlesex, Victualler. *Abbott*, Off. Ass.; *Hewitt*, Tokenhouse Yard. Dec. 2.

Blankley, Edw., Bloomsbury Market, Plumber, Painter, & Glazier. *Gibson*, Off. Ass.; *Nokes*, Charlotte Street, Bloomsbury. Dec. 2.

Boothroyd, John, Stayley Bridge, Lancaster, Stone Mason. *Back*, Verulam Buildings, Gray's Inn; *Harrop & Co.*, Stockport. Dec. 2.

Belt, Rob., Newcastle-upon-Tyne, Merchant. *Bell & Co.*, Bow Churchyard; *Stoker*, Newcastle-upon-Tyne. Dec. 2.

Bligh, Rob., Bishop Auckland, Durham, Surgeon & Apothecary. *Smithson & Co.*, Southampton Buildings, Chancery Lane. Dec. 2.

Biddle, Joseph, Birmingham, Factor. *Milne & Co.*, Temple; *Beswick*, Birmingham. Dec. 5.

Boyer, George, Farnham Place, Southwark, Nelson Square, Blackfriars Road, and Leadenhall Market, Tanner, Currier, & Leather Factor. *Edwards*, Off. Ass.; *Hutchinson*, Crown Court, Threadneedle Street. Dec. 9.

Bloxam, Wm., Warrford Court, Throgmorton Street, and Abingdon Street, Westminster, Stock Broker. *Starling*, Leicester Square; *Cannan*, Off. Ass. Dec. 9.

Berry, John, Tabernacle Walk, Hoxton, Draper. *Green*, Off. Ass. *Reid*, Broad Street, Cheshire. Dec. 9.

Bowen, David, Swansea, Glamorgan, Linen Draper, Hatter, Hosier, & Glover. *Groom*, Off. Ass.; *Wright*, Hare Court, Temple, and Stratford, Essex. Dec. 12.

Broady, Wm., Leeds, York, Wool Dealer, *Abbott*, Off. Ass.; *Riton & Sons*, Jewry Street, Aldgate. Dec. 12.

Bingley, Francis Edward, Wakefield, York, Printer. *Jones & Co.*, John Street, Bedford Row; *Hick*, Leeds. Dec. 12.

Cronshay, Sam., Putney, Surrey, Grocer & Cheesemonger. *Groom*, Off. Ass.; *Seard & Co.*, Bedford Street, Bedford Square. Nov. 21.

Christ, John George, Cooper's Row, Tower Hill, Merchant. *Crosby*, King Street, Cheshire; *Lackington*, Off. Ass. Nov. 28.

Carson, James Brown, Liverpool, Wool Merchant, Broker, and Commission Agent. *Hobbs*, Liverpool; *Walmesley & Co.*, Chancery Lane. Nov. 28.

Caldwell, Martin, Austin Friars, Merchant. *Gibson*, Off. Ass.; *Crosby*, King Street, Cheshire. Nov. 28.

Coates, Joseph, Worcester, Woollen Draper. *White & Co.*, Bedford Row; *Holdsworth & Co.*, Worcester. Nov. 28.

Churchill, Eliz., Cardiff, Glamorgan, Widow, Shoemaker, or Manufacturer. *Price & Co.*, Lincoln's Inn Fields; *Poole*, Bristol. Dec. 2.

Crosby, Benj. Rotherham, York, Draper & Tailor. *King*, Castle Street, Holborn; *Ozley*, Rotherham. Dec. 5.

Coleman, Tho., Dauntston, Stafford, Nail Master and Victualler. *Clarke & Co.*, Lincoln's Inn Fields; *Bennett*, Wolverhampton. Dec. 9.

Clark, Henry, Bridgwater, Somerset, Linen Draper & Silk Mercer. *Jenkins & Co.*, New Inn; *Clarke & Sons*, Bristol. Dec. 12.

Challinor, Benj., Derby, Colour Manufacturer. *Adlington & Co.*, Bedford Row; *Moss*, Derby. Dec. 12.

Cocker, Edwin, Wood Street, Cheshire, Hardwareman. *Burt*, Aldermanbury; *Clark*, Off. Ass. Dec. 16.

Davies, Thomas, and Wm. Davies, Liverpool, Merchants & Commission Agents. *Holden*, Liverpool; *Walmesley & Co.*, Chancery Lane. Nov. 21.

Done, Thomas, Talk-oth-Hill, Audley, Stafford, Farmer & Cattle Dealer. *Froggatt*, Clifford's Inn; *Skerratt*, Sandbach. Dec. 9.

Danford, Samuel, Battersea Fields, Surrey, and George Yard, Lombard Street, Money Scrivener. *Green*, Off. Ass.; *Lewis*, Church Court, Clement's Lane, Lombard Street. Dec. 12.

Devey, James Eykin, Hurcott Mill, Kidderminster, Worcester, Miller and Farmer. *Dangerfield*, Lincoln's Inn Fields; *Brinton*, Kidderminster. Dec. 12.

Etches, Edw., and Henry Etches, Hythe, Kent, Linen Drapers. *Edwards*, Off. Ass.; *Burt*, Aldermanbury. Nov. 21.

Elkington, Wm., Birmingham, Money Scrivener. *Abbott*, Off. Ass.; *Wright & Co.*, Tokenhouse Yard. Dec. 2.

Eads, John, Stonehouse, near Devonport, Linen Draper and Silk Mercer. *Burt*, Aldermanbury; *Goldsmid*, Off. Ass. Dec. 2.

Earp, James, & Thomas Haines, Brownlow Street, Holborn, Tailors. *Green*, Off. Ass.; *Pike*, Boyle Street, Saville Row. Dec. 5.

Field, Tho. Mornington Place, Camberwell New Road, Surrey, Flour factor. *Edwards*, Off. Ass.; *Pandemon & Co.*, Bush Lane. Nov. 21.

Foster, Jonathan, Eastingwood, York, Money Scrivener and Cattle Jobber. *Overton*, York; *Jacques & Co.*, Barnard's Inn. Nov. 28.

Fieldhouse, Benj., Kinfare, Stafford, Innkeeper. *Strangways & Co.*, Barnard's Inn; *Harriott*, Stourbridge. Dec. 5.

Gray, Richard, King Street, Aldgate, Ironmonger. *Belcher*, Off. Ass.; *Woodlston*, Leadenhall Street. Dec. 2.

Gibbs, Jos., Ramsey, Huntingdon, Grocer & Draper. *Milne & Co.*, Temple; *Day & Co.*, St. Ives. Dec. 5.

Graham, James, Natland, Westmoreland, Seed Dealer. *Wilson & Co.*, Kendal; *Addison*, Verulam Buildings, Gray's Inn. Dec. 12.

- Glover, John, May's Buildings, St. Martin's Lane, Watchmaker. *Murphy, Castle Alley, Royal Exchange; Johnson, Off. Ass.* Dec. 16.
- Hidson, Tho., Moseley Wake Green, Yardley, Worcester, and of Birmingham, Warwick, Factor, Jeweller, and Commission Agent. *Harrison, Birmingham; Norton & Co., Gray's Inn Square.* Nov. 21.
- Harwood, James, Over Darwin, Lancaster, Cotton Cloth Manufacturer and Provision Shopkeeper. *Addington & Co., Bedford Row; Makinson, Manchester.* Nov. 25.
- Hunt, Henry Francis, St. Mary-at-Hill, London, Wine Merchant. *Owen & Co., Mincing Lane; Waithman, Off. Ass.* Nov. 25.
- Hassell, James Newcombe, Shrewsbury, Salop, Merchant & Draper. *Treco, Shrewsbury; Clarke & Medcalf, Lincoln's Inn Fields.* Nov. 25.
- Haines, Wm. Filkes, Leamington, Warwick, Surgeon and Apothecary. *Bigg, Southampton Buildings, Chancery Lane; Haywood, Birmingham.* Nov. 25.
- Hicks, John Phillimore, and Charles Edward Hicks, Eastington, Gloucester, Clothiers. *Blaissone & Son, Dursley; White & Co., Bedford Row.* Dec. 2.
- Hustler, Orbell, Hasted, Essex, Scrivener. *Sewell, Hasted; Hall, Thompson, & Co., Salters' Hall, London.* Dec. 5.
- Halliley, Edward, Leeds, York, Cloth Merchant. *Wilson, Southampton Buildings, Bloomsbury Square; Payne & Co., Leeds.* Dec. 5.
- Horton, John, Leeds, York, Joiner, Builder, & Timber Merchant. *Strangways & Co., Barnard's Inn; Robinson, Leeds.* Dec. 5.
- Humphreys, John, Newgate Street, Victualler. *Tucker, Bank Buildings; Lackington, Off. Ass.* Dec. 9.
- Haigh, Daniel, Linthwaite, Almondsbury, York, and Joseph Haigh, of Stalhwaite, Huddersfield, York, Cloth Manufacturers. *Jones & Co., Barnard's Inn; Baitte & Co., Huddersfield.* Dec. 12.
- Hutchinson, Smith, Montague Street, Southwark, Leather Seller, and Bankside, Southwark, Victualler. *Cloze, Furnival's Inn; Lackington, Off. Ass.* Dec. 16.
- Jones, Anna, and John Foyster, Hasted, Essex, Ribbon Manufacturers. *Dixon & Sons, New Boswell Court, Carey Street, Lincoln's Inn; Jackson, Baintree, Nov. 25.*
- Jones, Tho., Little Newport Street, Leicester Square, Trimming Seller. *Dennis, Pallgrave Place, Temple; Whitmore, Off. Ass.* Dec. 9.
- Kingsley, James, Holme, Biggleswade, Bedford, Sheep Jobber. *Egan & Co., Essex Street, Strand; Clark, Off. Ass.* Dec. 9.
- Kehoe, Richard, New Street, Bishopsgate, Wholesale Grocer. *Lafy & Co., King Street, Cheapside; Tansward, Off. Ass.* Dec. 12.
- Lamert, Abraham, Church Street, Spitalfields, Preparer & Vendor of Patent Medicines. *Gibson, Off. Ass.; Chilton, Fenchurch Street.* Nov. 21.
- Layton, John Wm., Kew, Surrey, Coal & Corn Merchant. *Cox, Bush Lane, Cannon Street; Johnson, Off. Ass.* Nov. 25.
- Larke, Wm., Bungay, Suffolk, Wine and Liquor Merchant. *Kingsbar & Co., Bungay; Clarke & Co., Lincoln's Inn Fields.* Dec. 9.
- Miller, Jesse, Red Lion Passage, Red Lion Square, Tavern Keeper. *Taylor & Co., Great James Street, Bedford Row; Lackington, Off. Ass.* Nov. 21.
- M'Ardeil, Peter, Liverpool, Shipwright. *Birkett, Liverpool; Blackstock & Co., Temple.* Nov. 25.
- Moore, Richard, Brighton, Hotel Keeper. *Billing, King Street, Cheapside; Goldsmith, Off. Ass.* Dec. 2.
- Mason, Samuel, Liverpool, Liquor Merchant & Victualler. *Rowlinson & Co., Southampton Buildings, Chancery Lane; Rowlinson & Co., Liverpool.* Dec. 2.
- Myers, Tho., Marshall, Liverpool, Salt Broker. *Blackstock & Co., Inner Temple; Brubner, Liverpool.* Dec. 12.
- Nix, Samuel, and William Judson Grinsell, Queen Street, Cheapside, Wine & Spirit Merchants. *Hill, Copthall Court; Graham, Off. Ass.* Nov. 21.
- Oppenheim, Charles Fox, Whitechapel Road, & East India Chambers, Leadenhall Street, Merchant & Master Mariner. *Edwards, Off. Ass.; Richardson, Ironmonger Lane.* Dec. 16.
- Phillips, George, and John Whitlow, Haverfordwest, Linen & Woollen Drapers & Grocers. *Hare & Co., Bristol; Bridges & Co., Red Lion Square.* Nov. 25.
- Poole, William, and Villot Thomson, Great Surrey Street, Blackfriars Road, Victuallers. *Belcher, Off. Ass.; Messrs. Lewis, Ely Place, Holborn.* Dec. 9.
- Payne, Cornelius Marsh, and James Jones, Garratt Lane, Wandsworth, and Patenoster Row, Silk Printers and Traders. *Gibson, Off. Ass.; Broughton & Co., Falcon Square.* Dec. 9.
- Phillips, Sam., and Joseph Phillips, Liverpool, Merchants. *Chester, Staple Inn; Duport, Liverpool.* Dec. 12.
- Pope, William, and Artemas Cambridge, Liverpool, Ship Builders. *Blackstock & Co., Inner Temple; Brubner, Liverpool.* Dec. 12.
- Robinson, John, Manchester, Wine & Spirit Merchant. *Addington & Co., Bedford Row; Clegg & Co., Manchester.* Nov. 21.
- Roantree, Wm., Long Acre, Coach Builder. *Abbott, Off. Ass.; Messrs. Selby, Serjeants' Inn, Fleet Street; Hunt & Co., Stafford.* Nov. 25.
- Raby, Benj., Preston, Lancaster, Innkeeper. *Addington & Co., Bedford Row; Winstanley & Co., Preston.* Nov. 25.
- Ripley, Wm., Sheffield, York, Joiner & Builder. *Roigers, Devonshire Square; Ryalls, Sheffield.* Dec. 2.
- Revett, Jos., Colchester, Essex, Stage Coach Proprietor. *Prosser, Salisbury Square, Fleet Street; Graham, Off. Ass.* Dec. 5.
- Richter, Adolphus, Soho Square, Bookseller. *Edwards, Off. Ass.; Few & Co., Henrietta Street, Covent Garden.* Dec. 9.
- Solomonson, Sam., Union Court, Broad Street, Bill Broker. *James, Old Jewry; Clark, Off. Ass.* Nov. 21.
- Spencer, Thomas, Church Street, Bethnal Green, Shoe Manufacturer. *Abbott, Off. Ass.; Watts, Dean Street, Southwark.* Nov. 21.
- Sawyer, Geo. Blake, Leicester Square, Builder. *Greens, Off. Ass.; Pike, Boyle Street, Saville Row.* Nov. 21.
- Smetham, Aaron, Taunton Somerset, Innkeeper. *Pinchard, Taunton; Norton & Co., Gray's Inn Square.* Nov. 21.
- Spotwood, Monkhouse, Sale, Manchester, Merchant & Draper. *Graham, Manchester; Messrs. Baster, Lincoln's Inn Fields.* Nov. 25.
- Souter, Rob. Abercrombie, Colchester, Essex, Bookseller, Printer, & Stationer. *Messrs. Daniell, Colchester; Hall & Co., Salters' Hall, London.* Nov. 25.
- Smith, John Davidson, Norwood, Kent, Stable Keeper. *Birkett & Son, Cloak Lane; Clark, Off. Ass.* Nov. 25.
- Small, Alexander Duncan, Napbury, Hertford, Dealer in Cattle. *Groom, Off. Ass.; Gern & Co., Carey St. Nov. 25.*
- Stevens, James Southgate, Duke Street, Grosvenor Square, Plumber. *Richardson, Walbrook; Johnson, Off. Ass.* Nov. 25.
- Smith, John Davidson, Norwood, Surrey, Stable Keeper. *Birkett & Son, Cloak Lane; Graham, Off. Ass.* Dec. 5.
- Sustenance, Sam. Wm., Piccadilly and Chelsea, Bookseller & Stationer. *Abbott, Off. Ass.; Lawless & Son, Hatton Court, Threadneedle Street.* Dec. 5.
- Staig, John, and John Poulson, Wharf City Basin, Marble, Stone, and Granite Masons and Merchants. *Cattlin, Ely Place; Goldmid, Off. Ass.* Dec. 5.
- Scarr, Remorth Thomas, jun., Bishops Stortford, Hertford, Surgeon & Apothecary. *Pelle, Old Broad Street; Johnson, Off. Ass.* Dec. 5.
- Smalpage, Rob., Leeds, York, Tailor and Draper. *Wilson, Southampton Buildings, Bloomsbury.* Payne & Co. Leeds. Dec. 5.
- Stuart, Wm., Barnett, Mount Street, Grosvenor Square, Tailor & Brooch Maker. *Graham, Off. Ass.; Newbon, Great Carter Lane, Duxton's Common.* Dec. 9.
- Sharpley, Rice, and Geo. Sharpley, Oxford Street, Stationery. *Groom, Off. Ass.; Cross, Surrey Street, Strand.* Dec. 12.
- Shoorbridge, Geo., Skinner Street, London, Tailor & Draper. *Gibson, Off. Ass.; Green, Basinghall Street.* Dec. 12.
- Thatcher, Tho., Fleet Street, Florist & Seedman. *Becher, Off. Ass.; Bolton, Austin Friars.* Nov. 25.
- Taylor, Tho., Fore Street, Carpet Warehouseman. *Tyson & Co., Coleman Street; Mathman, Off. Ass.* Nov. 25.
- Taynton, Nathaniel, Lincoln's Inn, Law Stationer. *Edwards, Off. Ass.; Hopwood & Co., Chancery Lane.* Dec. 5.
- Thorne, Samuel, Nottingham, Wharf-ger. *Payne & Co., Nottingham; Taylor, Featherstone Buildings, Holborn.* Dec. 16.
- Vollans, Joshua, jun., Leeds, York, Woollen Cloth Manufacturer, & Woollen Warehouseman. *Turner, Basing Lane; Graham, Off. Ass.* Dec. 12.
- Ward, Tho., Liverpool, Hatter. *Tyson & Co., Coleman Street; Goldmid, Off. Ass.* Nov. 21.
- Wise, Wm., Manchester, Picture Merchant. *Newton, South Square, Gray's Inn; Bennett, Manchester.* Nov. 21.
- Winch, John, Stratford, Essex, & Cambridge Heath, Bethnal Green, Coach Master. *Groom, Off. Ass.; Messrs. Beddells, Leman Street, Goodman's Fields.* Nov. 25.
- Walker, Tho., Trubridge, Wilts, Cloth Manufacturer. *Belcher, Off. Ass.; Van Sandau, Old Jewry.* Dec. 5.
- Wilkinson, Tho., & Edw. Dowd, Sackville Street, Piccadilly, Bill Brokers. *Robinson & Son, Half Moon Street, Piccadilly; Lackington, Off. Ass.* Dec. 16.
- Wells, Tho., Binham, Norfolk, Farmer. *Withers & Co., Holt, Norfolk; Faithfull, King's Road, Bedford Row.* Dec. 16.
- Whereat, John, Portsmouth, Tavern Keeper. *Wimburn & Co., Chancery Lane; Martell, Portsmouth, or, Loaf, Portsea.* Dec. 16.
- Westly, William King, Bedford Row, Lancaster, Flax Spinner. *Addington & Co., Bedford Row; Clay & Co., Manchester.* Dec. 2.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Nov. 21, to Dec. 16, 1834, both inclusive, with Dates when gazetted.

The names printed in *Italics* are the Partners who receive and pay debts.

- Harmer, James, Thomas Flower, William James Holt, & John Sandell, Hatton Garden, Attorneys at Law and Solicitors; so far as regards William James Holt. Nov. 21.
- Harvey, Daniel Whittle, and Frederic Yates, Great George Street, Westminster, Attorneys and Solicitors. Nov. 25.
- Wilson, Thomas, and John Curtis, Montagu Street, Portman Square, and Gray's Inn Square, Attorneys and Solicitors. *John Carter, 45, Seymour Street, Portman Square.* Nov. 25.
- Comport, Michael, and Marshall Turner, Rochford, Essex, Attorneys and Solicitors. Nov. 25.

# The Legal Observer.

Vol. IX. SATURDAY, JANUARY 3, 1835. No. CCXLVI.

———" Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PROSPECTS OF THE PROFESSION.

THE new Ministry being now settled, it may not be uninteresting to our readers very briefly to inquire in what respect the state and prospects of our Profession are altered. With their policy or politics in any other matters but those which concern us, we have nothing to do; but to this extent they are most material to us.

We conceive, then, that at any rate we are better off than we were under Lord Brougham's administration. Any violent change of the existing state of the profession, if it be proposed at all, will come not from its head, but from without. We shall have no intestine warfare. We shall be united among ourselves, and we have no fear of the result. But at the same time that we deprecate any sudden or sweeping changes, we are perfectly ready to admit the propriety of all gradual and judicious reforms in the law; and we naturally turn to the three great measures of law reform now before the public, with the wish to consider the position in which they now stand.

And first, as to the General Registry question. We conceive that there cannot be a doubt that the supporters of this measure are losing ground. Their numbers have grown less on every division on the bill, and the evils of the plan have become more apparent the more the subject has been discussed. It will probably be brought before the new Parliament; but we have little doubt that it will be as distasteful to it as it was to the old one; and we see that Mr. Brougham, who has stood its

friend on several occasions, will not be able to render it his assistance in the new Parliament, as he has declined to stand again for Southwark. It may be that a measure which should be confined to the registration of all assignments of reversionary interests, would be advantageous, and remedy the great practical hardships now affecting that species of property. It is strange that the General Registry Bill left them untouched, as it did not extend to personal property, although, unquestionably, more frauds are committed in dealing with this, than with the conveyance of real property.

The bill for the Abolition of Imprisonment for Debt will, we suppose, be pressed on; but, in its present shape, we trust with no success. This is a subject not free from great doubt. The grievance of the present system, however, so frequently mentioned by declaimers and novel writers, that any man may be arrested on the affidavit of another, true or false, is unquestionably a great one; but it must accompany every system, until the nature of man can be altered. Human testimony and oaths must be relied on to a certain extent, or justice could not be administered. A man may be unjustly arrested on the false oath of another; a man may also be tried, convicted, and executed on the false oath of another; justice is equally perverted in each case, but there can be no remedy. We know that, as a general rule, very few malicious or false affidavits of debt are actually made; and we cannot legislate for exceptions to this rule. It remains, however, to be considered, whether there should not be some modification of the present system. Some have thought that, except in cases

where there is good reason to suppose that the debtor intends to abscond, when an application might be made to a Judge to issue immediate process against his person, a week's notice should be given before the arrest should be permitted. We confess we are inclined to doubt the propriety even of this alteration.

The importance, however, of these two measures, considerable as it is, sinks into the shade, in comparison with the Local Courts scheme. It will, we suppose, now be endeavoured to be forced on by its Originator, and no doubt will be supported by a certain party in both Houses of Parliament. To this plan we must ever be opposed. We have shewn, we trust, over and over again, that its consequences would be most ruinous to the best interests of the country,—nevertheless it appears to us that a measure might be introduced which, embracing the few advantages proposed by the Local Courts Bill, would avoid its evils. In connection with Corporation Reform, we are certainly friendly to the appointment of a competent Recorder in all the great towns of the country, who should be a barrister of a certain standing, and who might dispose of all the minor civil and criminal business within his jurisdiction. A plan of this nature, we think, would remedy all the real grievances of the public in this respect, and would leave untouched the existing frame-work of our laws.

## CHANGES MADE IN THE LAW DURING THE LAST SESSION OF PARLIAMENT, 1834.

### No. XVI.

#### THE ACT TO INVEST COMPANIES WITH NECESSARY POWERS, AND FOR THE SECURITY OF THEIR CREDITORS.

4 & 5 W. 4, c. 94.

By the 6 G. 4, c. 91, the King was empowered, in any charter of incorporation of any company, to declare that the members of such corporation should be individually liable for the debts and engagements of the corporation to such extent as should be declared by such charter, and its members should be liable accordingly. This provision, however, extended only to companies and associations incorporated by royal charter; but in many cases it has been considered that it may be convenient to

grant some of the privileges incident to corporations created by royal charter to companies and associations formed for trading, charitable, literary, and other miscellaneous purposes. By the present act, therefore, the King is empowered by letters patent to be from time to time for that purpose issued under the Great Seal of the United Kingdom of Great Britain and Ireland, or in Scotland under the Seal appointed by the Articles of Union to be used, and instead of the Great Seal thereof, to grant to any company or body of persons associated together for any trading, charitable, literary, or other purposes, and to the heirs, executors, administrators, and assigns of any such persons, although not incorporated by such letters patent, any privilege or privileges which, according to the rules of the common law, or in pursuance of the said recited act, it would be competent to the King, his heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation, and especially the before-mentioned privilege of maintaining and defending actions, suits, prosecutions, and other proceedings, both at law and in equity, in the name or names of any one or more of the principal officers for the time being of any such associations respectively, which privileges shall be granted in and by such letters patent, in such manner and form, and upon such conditions for the prevention of abuses in the management of the affairs of any such associations, and for the security of the rights and interests of their creditors, and for the protection of the public at large, as the King shall by any such letters patent as aforesaid see fit from time to time to prescribe and impose; and any letters patent which shall be so granted and issued as aforesaid shall, to the extent of the privileges thereby granted, and subject to the conditions to be thereby imposed, be as valid and effectual in the law as if such privileges were granted and such conditions were imposed by any act passed for granting and imposing the same: Provided always, that in all cases where such letters patent shall be granted to any such company or body of persons, it shall and may be lawful, in all suits or proceedings in equity commenced or instituted against the principal officer or officers of such company or body of persons, to join, for the purpose of discovery, in such suits or proceedings, any member or members of such company as the nominal defendant or defendants for or on behalf of such company or body of

persons, subject to the payment by the plaintiffs of such costs as the Court in which such proceedings may be had shall in that behalf order or direct: Provided always, that nothing in this act contained shall enable the King to grant to any company or body of persons any privilege under this act until after notice in the Gazette shall have been given three months that it is intended to grant such privilege or privileges. (§ 1.)

And to the end that the issuing of such letters patent, and the name or names of the principal officer or officers for the time being of the several associations thereby constituted, may be made known to the public, be it enacted, that an entry of the grant of such letters patent, and of the name or names of the principal officer or officers therein designated, or who may from time to time be appointed by virtue of the powers for that purpose contained in such letters patent, shall be made in a book to be kept for that purpose in the office of the Clerk of the Patents, and that the same shall be open for inspection at all reasonable times, by any person requiring the same, on payment of a fee of one shilling only; and further, that a sufficient notice or memorandum of such letters patent, together with the name or names of such principal officer or officers, be advertised in the London Gazette within one calendar month from the date of such letters patent, and also in some one newspaper published or circulating in the county or place where the meetings of any such association shall be usually held; and also, that upon the death, or change from any other cause whatever, of any such principal officer or officers, notice thereof, and of the name or names of the person or persons succeeding him or them, shall in like manner be recorded in the office of the Clerk of the Patents, and advertised in the London Gazette and in some one newspaper as aforesaid; and the officer or officers so from time to time recorded and advertised shall, for all intents and purposes, be held and considered as the party or parties entitled to sue and to be sued on behalf of his or their respective associations, within the meaning of this act, and of any patent or patents to be from time to time granted by virtue thereof. (§ 2.)

That any decree, judgment, order, or interlocutor made or pronounced in any action, suit, or proceeding in any Court of Law or Equity against any officer of any such company, body, or association named

as aforesaid, shall have the like effect and operation upon and against the property, funds, and effects of such company, body, or association, and upon and against the persons and property of every and any member thereof, as if such company, body, or association, and such member or members thereof, had been a party or parties to such action, suit, or proceeding, and as if such decree, judgment, order, or interlocutor had been pronounced against such company, body, or association, or against every or any such member or members thereof; provided that no diligence or execution shall pass or be issued thereon without leave first granted in open Court by the Court in which such decree, judgment, order, or interlocutor was made or pronounced, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after such person or persons shall have ceased to be a member of such company, body, or association. (§ 3.)

Provided always, that the principal officer or officers for the time being of such company or body of persons to whom such letters patent shall be granted shall, in the first week of the month of June and in the first week of the month of December in each year during the continuance of such letters patent, cause a true list of the names of all the then existing members of such company or body of persons, with their respective places of abode and description, to be filed with the Clerk of the Patents, and that the same shall be open for inspection at all reasonable times by any person requiring the same. (§ 4.)

Provided always, that nothing in this act contained shall authorize or be construed to authorize the grant to any company or body of persons of any privilege in derogation of any exclusive privileges now enjoyed by any company or corporation under any act or acts of parliament. (§ 5.)

## SUGGESTIONS FOR THE IMPROVEMENT OF THE LAW.

### No. II.

#### GRAND JURIES.—MALICIOUS PROSECUTIONS.

*To the Editor of the Legal Observer.*

Sir,

I perfectly accord with a correspondent in a late number of your work (p. 102), in the propriety of your setting apart a portion of your pages for suggestions of alterations in the law; and I avail myself of his hint, by offering

you a remark or two on a subject of some importance.

Your legal readers cannot fail to have observed the frequent gross abuse which is made of the power of the crown in prosecutions for conspiracies, and other similar prosecutions, which are instituted by individuals apparently with no better motive than to gratify their spleen or malice against persons who may have been obnoxious to them, unless they are actuated by a baser motive, which I believe is not unfrequently the case,—of extorting money from such persons.

These proceedings are often instituted at a comparatively trifling expence to the prosecutor, who has merely to go before the grand jury with his bill, and by a subtle or highly varnished statement, calculated to impress their minds with an unfavourable view of the conduct of the parties charged; and it rarely occurs, that with such materials a true bill is not found, although in the sequel there is not the least pretension for the measure.

Another excessive grievance not unfrequently arises in indictments for conspiracies, from persons not in the slightest degree implicated in the transactions complained of, being thrust into the bill from the simple circumstance of their having been casually present on some occasion; such, for instance, as being mere witnesses to a will in which they are not interested; and thus forced to undergo not only all the odium, but to endure the costs of the proceedings, the prosecution evidently having no other intention than that of excluding the individual so charged from becoming a witness on behalf of those more materially affected. It rarely occurs, that grand juries weigh the evidence with sufficient nicety and attention to distinguish who is or is not affected by it; and I have known instances where true bills have been found against such innocent parties, because they have been told by the prosecutor that a true bill must be found against the whole, and that it was necessary that they should be included.

It has been recently my lot to be called upon as a witness in two cases of prosecution for conspiracy decidedly of this class, which had no connection with each other, and the parties entirely different. In both these indictments several professional gentlemen of high character and reputation, one medical and the others in the law, were charged in the mode I have described; and in neither case did the prosecutor dare to face the defendants when the indictments were called on for trial, either to open his case or produce a single witness, and the defendants were, of course, instantly acquitted.

Now I have the strongest assurance in both these cases, from the high moral characters of the parties charged, that there was not a tittle of evidence to impugn them in the transactions, much less to convict them; and indeed it was distinctly avowed by the counsel for the prosecutions, that they had no evidence to support the indictment, and that they were instituted without the advice of counsel; and yet one of

the defendants was dragged from his home form the purpose of attending to the trial, and compelled to bring witnesses to speak as well to the facts as to character, a distance of two hundred miles, and at a cost which could not be less than 500*l.*, besides having his reputation sullied by a bill of this nature pending over him.

Surely there should be some method by which a grievance of this alarming nature is to be remedied: and I will merely throw out a hint or two on that subject, in the hope that some of your more practised and intelligent readers may be able either to confirm my opinion, or suggest a better remedy.

As this is a proceeding frequently undertaken without the knowledge of the parties charged, would there be any impropriety in arming the grand jury with the controuling power of a barrister as chairman, to regulate their proceedings, or of arming them with the means (to be exercised at their discretion) of sending the case, for more minute and searching inquiry, before two magistrates; or, at any rate, of requiring recognizances to be entered into by the prosecutor, with two sufficient securities, in a suitable penalty, to indemnify the defendants from costs in case of failure, or that they should have power to adjourn the case and issue a notice or summons to the parties charged, with a view, by obtaining their presence, of acquiring more accurate information on the subject, and the real nature of the case, by the examination of other witnesses on their behalf?

Some remedial measure of this sort would no doubt cause many of such bills to be cut short in their progress, and the matters to be disposed of without the necessity of a trial, whereby the characters of individuals might be screened from unmerited ignominy, as well as their pockets from enormous expence.

Should such methods of dealing with the case be deemed objectionable, it has occurred to me that a power might, at any rate, with great safety and propriety, be vested by law in the judges who preside at the trial, of certifying, so as to fix the prosecutor with costs, to be paid to the defendants in all cases in which the prosecution is abandoned by the record being withdrawn, or by the non-appearance of the prosecutor or his witnesses; or when the case fails, and the defendants are acquitted, by irrelevant or inefficient testimony; or when the judge shall be of opinion that the power of the crown has been abused for malevolent purposes.

This could not fail to operate as a great check on prosecutions of this description, and to be a safeguard to defendants.

I am aware that it may be urged that the parties aggrieved have a remedy by an action for a malicious prosecution; but this mode of obtaining redress is clearly objectionable in two points of view: first, on the ground of the additional expence which it entails on the already aggrieved party, who would in most cases have to contend against men of no substance; and secondly, the necessity which it

involves, of his exposing every circumstance connected with the original prosecution, in order to clear his character, both of which, instead of remedying, would only tend therefore to augment the evil.

Whilst observing on the conduct of grand juries, I would also beg to suggest the propriety of a printed address being delivered to them, declaratory of the general rules and principles which should regulate their conduct in respect to bills in general, and of the authority and power which they possess and ought to exercise in the matters referred to them. I mean the main and cardinal points of their duty, which I fear, from the verbal charge of the judge, are but imperfectly impressed on their minds and but little understood, and, indeed, rarely are delivered with that copiousness which is necessary, particularly to those who are initiated into the duty and not well acquainted with its routine.

I have been led to this observation from a recent remark of one of the learned judges on the singular conduct of a Middlesex Grand Jury in ignoring two bills, in which subsequent convictions were obtained at the Old Bailey, for manslaughter, on the Coroner's inquisitions. Surely the grand jury must have been grossly ignorant of their duty, or inattentive in the execution of it, as it could not have escaped their knowledge, had the questions been put to the witnesses called before them, that the Coroner's juries had, after one, if not two days' minute investigation, determined the question which they had assembled to discuss, namely, that the parties were already doomed by law, under the inquisitions, to undergo the ulterior trials, from which, by a crude and hasty inquiry, they had vainly decided on emancipating them.—Surely there is some master-head wanting in this establishment, or some deficiency in its organization, and it is high time that it should be reformed.

The Commissioners, in their Report on the Criminal Law, having expressed as their opinion that these inquiries of the grand jury may safely be dispensed with, where the Coroner's inquest has been duly held, it is hoped that the day is not far distant when some legislative measure will be framed on the subject, whereby the machinery of the indictment, as a protection against acquittal from informality under the inquisition, may still be preserved, without the necessity of a double inquiry into the merits of the case, previously to the final trial at the assize. It would not only effect a great saving of expence, which is defrayed out of the county rate, but the valuable time of witnesses also; many of whom are no doubt deterred from prosecuting cases, from the fearful ordeal which they have to encounter of attending these investigations of the case before juries, independently of examination and inquiries before the magistrates, which, if the Coroner discharges his duty, may be dispensed with, as well as the interlocutory proceeding of the grand jury.

W. B.

## CONSTRUCTION OF THE UNIFORMITY OF PROCESS ACT.

No. II.

### DISTRINGAS.

The subject of our present article will be the decisions pronounced by the Courts with respect to the writ of *distringas*.

As a general rule, in order to obtain this writ, the affidavit on which the application is founded, must state that there have been at least three attempts made to serve the defendant with the writ of summons, by calling at his place of abode, if he has one. (See Dowling's Practice, p. 56.) It is sufficient that the calls should be made in the same day, if it appears to the Court that the defendant is purposely keeping out of the way, (*White v. Western*, 2 Dowl. Prac. Cas. 451; 7 L. O. 701, S. C.); and the calls need not all be made by the same person (*Smith v. Good*, 2 Dowl. Prac. Cas. 398). The service cannot, however, be effected at the office of the defendant's employer (*Thomas v. Thomas*, 2 M. & Scott, 730). The deponent should at each of the first two calls state the nature of his business, and make an appointment for each of the two last, to see the defendant (*Coett v. Willis*, 5 L. O. 144; *Johnson v. Rouse*, 1 C. & Mee. 26; 3 Tyr. 161; 1 Dowl. Prac. Cas. 641, S. C.; *Atkins v. Lowther*, 5 L. O. 144; *Simpson v. Lord Graves*, 2 Dowl. P. C. 10; 6 L. O. 45, S. C.). At the last call, which must be at least eight days before application is made to the Court, a copy should be left at the defendant's place of abode (*Smith v. James*, 5 L. O. 143; *Brian v. Stretton*, 1 C. & M. 74; 3 Tyr. 163; 1 Dowl. Prac. Cas. 642, S. C.; *Atkins v. Lowther*, 5 L. O. 144; *Coet v. Willis*, *ib.*; *Street v. Lord Alvanley*, 1 C. & M. 27; 3 Tyr. 162; 1 Dowl. Prac. Cas. 638, S. C.; *Hill v. Mould*, 3 Tyr. 162; 2 Dowl. Prac. Cas. 10, S. C.) It should also appear what answers were given at the time of the calls being made. The affidavit must shew such circumstances as will fairly authorize the Court to conclude that the defendant is at home or in the neighbourhood, or keeping out of the way to avoid being served. (*Anon.* 1 Dowl. Prac. Cas. 513; 5 L. O. 63, S. C. *Johnson v. Rouse*, 1 C. & M. 26; 3 Tyr. 161; 1 Dowl. Prac. Cas. 641; S. C., and the above cited cases. *Waddington v. Palmer*, 2 Dowl. Prac. Cas. 7; 6 L. O. 444, S. C.; *Price v. Bower*, 2 Dowl. Prac. Cas. 1; 6 L. O. 445, S. C.; *Baker v. Myers*, Dowling's



Practice, p. 56; *Smith v. Hill*, 2 Dowl. Prac. Cas. 225.)

Although the affidavit should state that a copy was left at the third call, the Court of Exchequer would not set aside a *distringas* on the ground of such averment not being contained in the affidavit on which the application for the writ was founded. (*Smith v. Macdonald*, 1 Dowl. Prac. Cas. 688.)

Where it was sworn that a defendant had gone abroad to avoid his creditors, and left servants at his house, the Court allowed the plaintiff to take a *distringas*, the affidavit having the usual requisites, and the service having been effected at the residence. (*Moone v. Thynne*, 3 Dowl. Prac. Cas. 153.)

These decisions have been pronounced in those cases where the residence of the defendant is known.

Where his residence is unknown, it should be shewn what efforts have been made personally to serve the writ of summons; and it must also appear that the defendant keeps out of the way to avoid being served. If he is abroad, a *distringas* may be obtained either to compel his appearance, or for the purpose of proceeding to outlawry, but not in the alternative. (*Fraser v. Case*, 1 Dowl. Prac. Cas. 725.) If it is sought to outlaw the defendant, it must be shewn that he went abroad for the purpose of avoiding his creditors. (*Simpson v. Lord Greaves*, 2 Dowl. Prac. Cas. 10; 6 L. O. 45, S. C.)

A *distringas* however, in order to proceed to outlawry, may be grantable under circumstances which would not entitle the plaintiff to a *distringas* to compel an appearance. (*Jones v. Price*, 2 Dowl. Prac. Cas. 42.)

When the writ of *distringas* is in the hands of the sheriff, he must distrain to the amount of forty shillings; but if there is not property to that amount, he must take whatever there is; and on his return, stating the amount of the levy, the plaintiff will be entitled to enter an appearance for the defendant. (*Jones v. Dyer*, 2 Dowl. Prac. Cas. 445.) Where the Sheriff actually levies, and makes his return accordingly, the plaintiff may, in case of the defendant not appearing, enter an appearance for him without the leave of the Court, on affidavit of the due execution of the writ. (*Johnson v. Smealy*, 1 Dowl. Prac. Cas. 526. Where the Sheriff has not been able to execute the *distringas*, and make the return of *non est inventus* and *nulla bona*, the Court will not grant leave to enter an appearance for the defendant, unless it is shewn by affida-

vit that every means to find him or give him notice have been tried. (*Saunderson v. Bowen*, 2 Dowl. Prac. Cas. 338; *Balgay v. Gardner*, 2 Dowl. Prac. Cas. 52; *Scarborough v. Evans*, 1b. p. 9.) Where the defendant resides in ready-furnished lodgings, the Court will not allow an appearance to be entered for him upon a return of *nulla bona* and *non est inventus*, unless it is sworn that the defendant has no goods on which the Sheriff can levy (*Cornish v. King*, 2 Dowl. Prac. Cas. 18). The Sheriff's return, however, of *non est inventus* and *nulla bona* is not of itself sufficient to entitle the plaintiff to enter an appearance for the defendant; and the Court cannot take notice of hearsay statements as to the efforts made for the execution of the writ. (*Daniels v. Varity*, 3 Dowl. Prac. Cas. 26.) Where, however, three attempts were made to serve a *distringas*, but which attempts were rendered ineffectual by the conduct of the defendant's agents, the Court, on an affidavit of the circumstances, allowed the plaintiff to enter an appearance for the defendant. (*Tring v. Gooding*, 2 Dowl. Prac. Cas. 162.)

With respect to irregularities in this writ, it was held in the case of *Tyser v. Bryan*, 2 Dowl. Prac. Cas. 640, that it was not a sufficient ground for setting aside the writ for irregularity, that in the copy of the writ of summons which had been left with the defendant, he was described as "Andrew Bryon," instead of "Andrews Bryan." Where there is a defect in the indorsement on the writ, and a variance from the summons; and it was sought, on those grounds, to set aside the service of the *distringas*, the Court held, that after eighteen days had been allowed to elapse since the execution of the writ, the application was too late. (*Wright v. Warren*, 2 Dowl. Prac. Cas. 724.)

With respect to this writ it is to be observed, that by 2 Reg. Gen. H. T., 2 W. 4, extended by 5 Reg. Gen., M. T., 3 W. 4, it is required that on the copy of the writ of *distringas*, as well as on all the other writs provided by the Uniformity of Process Act, the amount of debt and costs claimed by the plaintiff shall be indorsed. In the form of indorsement attached to the rule there are these words: "And if the amount thereof be paid to the plaintiff or his attorney within four days from the service hereof, further proceedings will be stayed." When a plaintiff issued a writ of *capias*, it frequently happened, that as the word "service" seemed inconsistent with the process sued out, he introduced the word "execu-

tion" instead of "service." This being a dereliction of the form given by the Rule, several Judges, on application on the part of the defendant, directed the applicant to be discharged, or the bail-bond to be delivered up to be cancelled. This was, however, considered by other Judges as too severe a penalty on the plaintiff for such a dereliction of practice, and therefore, after consultation by all the Judges, it was determined that the plaintiff should be at liberty to amend, with a stay of proceedings from the time of effecting the amendment for four days, in order that the defendant may have an opportunity of settling the action on payment of debt and costs. See *Cooper v. Waller*, 3 Dowl. Prac. Cas. 167; *Shirley v. Jacobs*, *Ib.* p. 101; *Urquhart v. Dick*, *Ib.* p. 17. Now, as to the writ of *distringas*, it may more properly be said to be executed than served; for the language of the writ is, in addressing the sheriff, "how you shall execute this our writ, you make known to us in our said Court." The form of indorsement, however, must be strictly pursued. Yet, according to the decisions in the last cited cases, it is presumed that, in case of the improper substitution of the word "execution" for the word "service," the Courts would allow a similar indulgence on the same terms as was extended in the case of the writ of *capias*.

## LAW OF ATTORNEYS.

## No. XXV.

## ADMITTANCE.

THE following case may be of interest to some of our readers:

*R. V. Richards* applied to the Court to admit an attorney, who, in his affidavit, stated that he had taken out his certificate for many years, and had been in the habit of employing his clerk to do so; but that in the last year, through an error of the clerk, no certificate had been taken out. He further stated, that he had continued to practise until after the expiration of the time for which the certificate was granted; but had not, until very lately, been aware of the omission, upon discovering which the present application was made. The cases of *in re James Winter*, MSS., and *ex parte Leacroft*, 4 B. & Ald. 90, were cited as authorities for granting the rule applied for, and were read to the Court.

*Denman*, C. J.—We will grant a rule in this case, upon payment of a moderate fine.

Rule granted, upon payment of 40s.—*Ex parte Rigby*, 1 N. & M. 593.

## REVIEW.

*The Law and Practice of Elections for England and Wales, as altered by the Reform Acts, including the Practice on Election Petitions; with a copious Appendix, containing all the Statutes relating to Elections, Forms used in Elections, Lists of Boroughs, with the Number of Voters, &c.* By Charles F. F. Wordsworth, Esq., of the Inner Temple, Barrister at Law. Second edition, corrected and much enlarged. London, 1835: Maxwell; S. Sweet; and Stevens & Sons.

THE second edition of this work has appeared very opportunely on the eve of a general election; and the author having availed himself of all the decisions which have taken place since the former publication in 1832, we think the present edition will be found peculiarly useful. The scope and object of the book will appear by the following brief analysis of its contents:

1. The rights and duties of voters in respect to registration in counties.
2. The same in cities and towns.
3. The duties of overseers in towns.
4. The same in cities and boroughs.
5. The duties of clerks of the peace.
6. The duties of town clerks.
7. The duties of revising barristers in counties.
8. The same in cities and boroughs.
9. The register of voters when completed.
10. The register of voters for London as regards liverymen.
11. Persons eligible to vote, and who must be inserted in the lists for counties.
12. The same for cities and towns being counties.
13. The same for cities, towns, and boroughs.
14. Persons ineligible to vote, and who therefore must be excluded from the lists.
15. The calling of a new parliament, and of the issuing of the writs.
16. Proceedings previous to the election in counties. The same in cities and towns being counties. And in cities, boroughs, and towns.
17. The election in counties.
18. The election in cities and towns being counties, and in cities, towns, and boroughs. The same in Monmouth and contributory boroughs in Wales.
19. Persons disqualified to sit in parliament.
20. Lost votes on account of ineligibility of candidates, &c.
21. Interference and undue influence in elections, riots, &c.

22. Bribery and treating, and agency.

23. Returning officers, and their duties.

24. Election petitions; presenting them, recognizances, appointment of committees, proceedings before the committee, witnesses, evidence, agency, the committees' report, costs, &c.

The Appendix contains all the Statutes relating to Elections, the forms used at elections, and a table of boroughs, &c. shewing their population and number of voters respectively.

In this edition the author states he has again consulted most, if not all the authorities, and the work contains an additional quantity of matter, amounting to nearly one-third. To some parts of the treatise which more peculiarly relate to members of the profession, we may direct the attention of our readers.

The Law relating to Election Agency, frequently undertaken by solicitors, is collected by Mr. Wordsworth in the chapter on Bribery and Treating; but as an agent may be engaged either for the general purposes of the election, or for special purposes only, it is impossible, he says, to lay down a rule by which such a question may be tried; and it depends on a variety of circumstances combined together, from whence the Committee, as jurors, form their belief. The several cases on the subject are concisely stated.

The duties of Clerks of the Peace on receiving the list of voters from the overseers, are also clearly pointed out, namely, as to persons objected to, attending the revising barrister, registering the corrected list of voters, preparing written or printed copies for sale, and also lists of the polling districts. So of the Town Clerks, as to preparing and affixing up lists of freemen, &c.

The late parliament having been dissolved, as appears by the Gazette of Tuesday the 30th Dec. last, it may be useful to state (which we do from Mr. Wordsworth's book) the time when the several elections must commence after the receipt of the new writs, which, it was understood, would be sent by the post on the 30th December.

As to Counties, the Sheriff, within two days from the receipt of the writ, must cause proclamation to be made of a special county court, to be holden for the purpose of the election, not later from the proclamation than the 16th day, nor sooner than the 10th day. The time of proclamation must be between eight o'clock in the forenoon, and four in the afternoon.

In Cities and Towns, being Counties, the election must be holden within eight days after the receipt of the writ; and three days' notice at least, exclusive of the day of receiving the writ, must be given of the day of election.

In Cities, Boroughs, and Towns, the Sheriff, on receiving the writ, must make and deliver the precept to the returning officer within three days, and the returning officer must give four days' notice of the election; and the election must take place within eight days from the receipt of the precept.—There are some exceptions stated by Mr. Wordsworth, in which special notices are requisite to be given.

#### *The Legal Almanack, Remembrancer, and Diary for 1835.*

We are not permitted to say any thing in commendation of this work, but may state its contents, and point out its objects and intended utility. It comprises—

1. A List of the *Judges and Officers* of all the Superior Courts, viz.: Chancery, King's Bench, Common Pleas, Exchequer, Judicial Committee of the Privy Council, Admiralty, Ecclesiastical, Bankruptcy, Central Criminal, and Insolvent Debtors Courts.

2. The Regulations of the Four *Inns of Court*, for the Admission of Students and Calling to the Bar, and a List of the Benchers and Officers of each Inn.

3. *The Bar*: shewing the rank and precedence of the several King's Counsel and Serjeants, and the order of seniority of the Outer Bar, by giving the exact date of the Call of each Member, and the Inn of Court to which he belongs. The Metropolitan Counsel are distinguished in a separate list from the Provincial. The information contained in this part of the work is entirely new, and the search has been extended back to the year 1780, in order to include the name of every Member now living.

4. The *Circuits* of the Judges, and the several Counsel attending each. We believe that this List comprises all the Gentlemen who have attended the Circuits within the last few years. The names of those who have been absent for several years have not been given.

5. *Officers of the Houses of Parliament.*

6. *The Incorporated Law Society*: its Plan and Objects, Regulations, and List of Members.

7. *Certificated Pleaders and Conveyancers.*

8. *Quarter Sessions* throughout England and Wales, with reference to the 11 G. 4, and 1 W. 4, c. 70, and 4 & 5 W. 4, c. 47, including the Central Criminal Court, &c.

9. *Local Courts*: Durham, Lancaster, Marshalsea and Palace, Lord Mayor's and Sheriffs Courts.

10. The *Magistrates* and Law Officers of the City of London, the Police Magistrates and Commissioners, the Poor Law Commissioners, Assistant Commissioners, and Secretaries.

11. *Commissioners* for taking Affidavits.

12. A *Calendar* adapted peculiarly for the use of the Profession, shewing the particular days for transacting various kinds of Legal business, Quarter Sessions, Terms, Sittings, delivering Pleadings, (with reference to the new Statutes,) Elections, &c.

13. *Holidays* kept at the Chancery and Common Law Offices—many of which are in addition to those mentioned in the Law Amendment Act, 3 & 4 W. 4, c. 42, § 43.

14. *Terms and Returns*.—Easter Term is this year prolonged, and Trinity Term postponed, four days.

15. *Times of Attendance at the several Offices* in Chancery, King's Bench, Common Pleas, Exchequer, Admiralty, Ecclesiastical and inferior Courts, Sheriffs, &c.

16. *Public Offices* connected with the Law: Patents, Public Records, Registries of Deeds, First Fruits, Tenths, &c.

17. *Ad valorem Stamps, Tables of Insurance*, &c.

18. As suggested by several Subscribers, the book may be made available as a *Diary*, by being interleaved; and the Publishers will attend to any instructions they may receive in that respect.

As an example of the utility of that part of the work which contains a List of the Bar, with the dates of their Call, we subjoin the order of precedence in which the intended twelve new King's Counsel will rank in case they are all promoted on the same day; and it will be observed that the exact date of Call was necessary to be given, as several have been called in the same Term. It may be a question how the precedence would be determined where two Gentlemen of different Societies were called on the same day.

	<i>Date of Call.</i>
Mr. Wakefield	- - May 2, 1807
Mr. Burge	- - May 20, 1808
Mr. Skirrow	- - May 22, 1810
Mr. Temple	- - May 23, 1810
Mr. Barber	- - July 10, 1810
Mr. J. Miller	- - June 25, 1811
Mr. Spence	- - June 28, 1811
Mr. Platt	- - Feb. 9, 1816
Mr. Kindersley	- - Feb. 10, 1818
Mr. Jacob	- - June 28, 1819
Mr. Wigram	- - Nov. 18, 1819
Mr. Kelly	- - May 7, 1824

## SELECTIONS FROM CORRESPONDENCE.

No. LXXXVIII.

### ATTORNEYS AT LAW.—ARTICLED CLERKS.

*To the Editor of the Legal Observer.*

Sir,

It has often occurred to me, and no doubt it has also to many others, that attorneys, although most of them men of education and talent, are nevertheless most inconsistent and negligent regarding their own welfare. One instance in particular is the following: the number of admissions of young men every term as attorneys in the respective Courts, is a subject of daily observation and complaint; and there is not one professional man, I may venture to say, who does not make the general observation, that there are already too many admitted; and if the number goes on increasing in this manner, a large proportion must exist in a very humble, not to say degraded state. Yet the same individual does not see the remedy, which he has in his own power, to avert the evil. What then is the remedy? Why a very simple and easy one: to refuse to have in his office more than *one* articulated clerk at a time, and that one only with a respectable premium. So far he would set an example, by which he would no doubt be followed, and the general body of attorneys soon find the benefit of adopting such a course.

But I would go further than this, to keep the profession respectable. I would endeavor to procure an act of parliament, that no attorney *should be permitted* to have more than one articulated clerk at any one time; and that instead of the stamp on such articles being as it at present is, 120*l.*, it should be 200*l.* But this duty should cover the whole, and after the clerk had served his time he should be *admitted* without any further stamp duty for such admission; and also that the attorneys should be exempt from paying any sum of money for their *certificates*, or if they did, it should be but of small amount; and the way I would propose to meet the loss which the revenue might sustain by this alteration, would be to compel physicians, surgeons, and apothecaries, who are much better paid than attorneys, to take out a certificate, with a proportionate stamp duty thereon: and I would ask, why are they exempted?<sup>a</sup>

It certainly seems to me that an alteration of the kind here pointed out would keep the profession of the law respectable, and at the same time would benefit, instead of injuring the revenue. If you are of the same mind,

<sup>a</sup> If the annual certificate duty be removed from the legal practitioner, we cannot perceive the justice of inflicting a similar impost on any other profession. The fair and equal tax would be, to place it on the indentures of medical practitioners. Ed.

and think these suggestions worthy of a place in your very able work, the insertion therein may induce some more competent person than myself to communicate his ideas further on this important subject. B.\*

#### BARRING ENTAILS.

Permit me, through the medium of the Legal Observer, to ask the question, whether the system recommended in all the recent publications, and I believe generally adopted by the profession, for the purpose of barring entails under the statute 3 & 4 W. 4, c. 74, can be considered in the courts of law as having the desired effect. I should trespass upon your valuable columns to a greater extent than would be agreeable to your readers, were I to make use of all the arguments which present themselves to me, and have led me to believe that a judgment will be given against the system whenever the question may require a decision; I will therefore only make use of the most prominent.

It will be observed, that every section of the act containing enactments on this head, makes use of the word "disposition;" and by the 41st section it is enacted, that no assurance by which any disposition of lands shall be effected under that act, shall be of any avail unless inrolled. According to the system above alluded to, if *A.*, a tenant in tail, was desirous of executing a mortgage to *B.*, a deed would first be executed by *A.*, conveying the premises to *C.*, to the use of *A.* in fee; which deed would be inrolled according to the statute; and subsequently *A.*, as tenant in fee simple, would execute a mortgage to *B.* As the act enacts that the assurance by which the disposition is effected shall be inrolled, it becomes necessary to consider by which of these assurances the disposition is effected. Such a deed as the former has always been held *not* to be a disposition; Watk. on Descents, p. 181; and see Har. n. 2 to Co. Litt. 12 b; and therefore *not* the deed directed by the act to be inrolled. The sections on this head clearly show the Legislature to have had no contemplation of such a disposition as the former kind; but on the contrary, that by which the intention of the parties is actually carried into effect. A conveyance and re-conveyance may however be supported. S. H.

#### R. M. T., 5 W. 4., C. P. CERTIFICATES, &c.

The 37 Geo. 3. c. 90, requires that every certificate shall be entered in *one of the Courts*. How far, therefore, is the above rule valid, in requiring that it shall be entered in *two of them*?

The rule is admitted on all hands to be unjust and vexatious towards the profession; but it seems to me to be unjust towards the Master's Office of the Court of King's Bench, (unless the fee paid there for the entry goes to the Treasury); for, of course, every attorney will now go at once to the Clerk of the Warrants in the Common Pleas, and pay 1s., and not

trouble himself to go first to the Master's Office of the King's Bench, and then to the Clerks of the Warrants. J. C.

#### ADMISSION OF ARTICLED CLERKS AS STUDENTS AT THE BAR.

*Lincoln's Inn, Dec. 19th, 1834.*

Sir,

If the enclosed should be considered worthy of insertion in your useful publication, the writer thinks you would be conferring a benefit on the profession by doing so.\*

A CONSTANT READER.

To the Editor of the  
Legal Observer.

To the Honourable the Benchers of  
Lincoln's Inn.

Gentlemen,

It is with considerable diffidence that I venture thus publicly to address you on a subject which has occupied the attention of persons so much my superiors; but placed as you are, the guardians of the interests of so important a part of the community, and consequently rendering all your proceedings of importance to the public, it cannot be doubted but that you will pay attention to the humblest individual who is anyway prejudicially affected by them.

As a humble but zealous student of the noble science to which we mutually belong, but in which we are at so great a distance from each other, I have now passed four years in the acquisition of the various knowledge requisite for members of the junior branch of the legal profession, and had just tasted sufficient of the pleasure arising from the study of the law, to decide upon entering on that career which you yourselves have all passed with so much honor, when I found, upon inquiry at your steward's office, for the first time in my life, that although I had passed so much time in learning the duties of an attorney and solicitor, yet that with respect to the bar I stood in precisely the same place as those who had been labouring in any other pursuit, however foreign to the law, or had been doing nothing at all; and moreover, that if I intended, at the expiration of my legal apprenticeship, to rise any higher in the profession, I must cancel my articles, or strike my name off the roll of attorneys in case I should have been admitted, and begin a fresh apprenticeship, in order to eat my way to the bar with greater leisure; but that although I was not allowed to practise during that time in the profession which I had learned, and which I had believed was so intimately connected with that of the bar, yet that I should not be required to give up any considerable part of my time in my new avocation,

\* We are always happy to insert the suggestions of every branch of the profession. Ed

provided I paid my termages, commons, &c. regularly, and attended a certain number of hours in each term at the Hall of your Honourable Society; and the rest of my time I might devote in any other pursuit, liberal or illiberal.

Now, Gentlemen, with the greatest deference to you, I humbly inquire what substantial reason is there for expressly excluding from your Society a whole body of men, educated in the study of the law, and who, allow me to add, have risen so much in respectability within the last century, when hitherto (that is to say, before your new regulation) they have always been admitted, and have contributed so great a number of your brightest ornaments.

It would be a libel on the high-minded and independent conduct for which you have been always famed, were anything like *jealousy* to be imputed as the motive; but the ground, and the only ground, upon which that motive has been suspected, is the want of any other. Taking it for granted that there is no objection to any one studying for the bar, merely because he has before studied the law, I cannot conceive why it is forbidden to the student who is qualified by time and expense, to continue to practise as an attorney or solicitor whilst he is graduating for the bar; inasmuch as there is no such distinction in the sister professions of divinity and physic, in which the humblest curate may become Archbishop of Canterbury, and the apothecary President of the College of Physicians.

Gentlemen who have had the advantage of a superior education, and, moreover, the means of greatly improving it, always will take the precedence of their inferiors in those respects; but surely it will never be said, that a seat at the English bar is to be *purchased* by those who have the greatest means. The diligent student, who is qualified in respect of acquirements and respectability, and who has *bond fide* devoted the requisite time in the pursuit of his studies, surely ought not to be shut out from the fair reward of his labour, unless there is some positive objection.

The time is now arrived when institutions must stand or fall by the strength of their own merits; one attempt has already been made to attack the independence of the bar; and although the person who now addresses you has neither the means nor the wish to encroach upon the just discretion of the Benchers, who may, morally speaking, be said to be removed from all interested feelings on the subject; yet as timely concessions would avert the objects of evil-disposed minds, he humbly offers the above to your attention, thinking that the enlightened men composing your body will not refuse to listen even to

AN ARTICLED CLERK.

## SUPERIOR COURTS.

### Rolls Court.

#### WILL.—BEQUEST.—SEPARATE ESTATE.

*A bequest to granddaughters, then unmarried, to be under their sole control, exclusive of the control of their mother, is not a separate estate to the legaters, exclusive of their husbands.*

The bill was filed by the assignees of an insolvent, against the executors of Mrs. Elizabeth Wadsworth; and stated among other things, that Mrs. Wadsworth, by her will bearing date, Feb. 7, 1829, made a bequest to the insolvent's wife and her sister, in the following terms:— "It is my will that my two granddaughters, Eliza and Rebecca Wadsworth, receive the full interest of all my monies not otherwise bequeathed, that I may die possessed of; and it is my will that the said interest be for, and under the sole control of my said two granddaughters, the principal to be equally divided for the use of the surviving issue; but if either— And that Mary Wadsworth, their mother, shall have no control whatever over their property; and at their demise the principal to be equally divided for the use of their issue; but if either of my said granddaughters die without issue, then," &c.; in which event the testatrix gave the bequest over to her niece. The bill further stated, that the testatrix died in the June following, and that Eliza Wadsworth, one of the granddaughters, married in December of the same year Frederick Wood, and that there were two children issue of that marriage, and that Mr. Wood became an insolvent some time after, and the plaintiffs were appointed his assignees. The bill prayed that the assignees might be declared entitled to the benefit of the bequest to Mrs. Wood. To this bill the defendants demurred, and alleged for the demurrer, that the above words gave Mrs. Wood a separate estate in the interest of the fund for her life, independent of her husband; and that therefore his assignees standing upon his interest had no right to the benefit of the bequest.

Mr. *Spence* in support of the demurrer submitted, that it was supported by the principles of a Court of Equity, applicable to the separate estates of married women, which are of the creation of this Court. He cited among other cases, *ex parte Ray*, in *re May*; *Adamson v. Armitage*; <sup>b</sup> and a late case of *Blake v. Lyne*.<sup>c</sup>

Mr. *Pemberton* and Mr. *Kindersley*, contra. The terms of this bequest did not exclude the right of the husband, nor was that the intention of the testatrix, whose sole object was to exclude the mother from any control over the

<sup>a</sup> 1 Madd. 199.

<sup>b</sup> Cooper, 283.

<sup>c</sup> Not reported, we believe.

bequest, conceiving her to be of an improper character. But supposing that the testatrix did intend to exclude the husband of the legatee, that was an intention which the law of this Court would not give effect to. The legatee in this case, being an unmarried woman at the time, had a complete right to dispose of her interest in this bequest, and could not be fettered in the enjoyment or disposal of it by any attempt of the testatrix to exclude the control of any husband whom she might afterwards take. By the marriage, the interest of the legatee passed to the husband, and his interest in the wife's legacy was transferred to his assignees, by virtue of the statute; subject however, to the wife's equity to recover a provision out of it, if no settlement had been made on her, on her marriage. In support of this argument, they relied on the principle of the cases of *Newton v. Reid*; <sup>4</sup> *Woodmiston v. Walker*; <sup>5</sup> *Jones v. Sulter*; <sup>6</sup> *Brown v. Pocock*.<sup>7</sup>

The *Muster of the Rolls* took time to consider the case. In giving his judgment, after stating the facts, his Honor said the case involved a point of considerable importance. Two questions were raised by the demurrer; the first was, whether it was the intention of the testatrix to give the income of this fund to Eliza Wadsworth to her separate use, and exclusive of the rights of any husband she might marry. The second was, whether that intention, if she had such, could be sanctioned by the Court. No question arose on the incomplete sentence, which was only just begun by the testatrix, that sentence is immediately afterwards resumed and completed; the sentence commenced and broken off, must be considered as omitted altogether; that which follows provides against the controul of the mother of the granddaughters over the bequest. The testatrix's intention appears to have been, to exclude the maternal interference and influence, and not the control of the husband. In order to give a separate estate to a woman, all the authorities require that there should be words showing an unequivocal intention on the part of the donor to exclude the marital right. Such being the rule, was there in this case no doubt of the testatrix's intention to exclude the husband? so far was this from being the case, that the plain construction of the clause leads to a totally different conclusion; the words appear clearly to be introduced for the purpose of excluding, not the right of the husband, but the control of the mother. But the most important question raised is, whether, supposing the intention of the testatrix to give a separate estate to her unmarried granddaughter to have been unequivocally expressed, that was such an intention as the law would carry into effect. The objection is, that the restriction attempted to

be imposed upon the enjoyment of the property is inconsistent with the nature of the interest given, and that objection is supported by all the best authorities. Thus it has been held, that a gift to the separate use of a married woman, and restriction upon her alienation of the property, are good only during the subsisting coverture, and that the restraint being once removed by her becoming a widow, the fetter cannot again attach upon a future marriage, *Jones v. Sulter*.<sup>8</sup> The question here raised was, whether, supposing the testatrix to have intended to impose such a fetter upon her granddaughter, a single woman, and the granddaughter married without obtaining payment of the money, the fetter attached. His Honor was of opinion it did not, because such a restraint was inconsistent with the nature of the interest given, and could not therefore be lawfully enforced. The granddaughter's interest was absolute before marriage; she might have taken the fund for herself, or given it to any other person; and why might she not by the act of marriage give it to her husband? he felt himself bound, not only on principle, but also on the authority of the latest decisions by the Vice Chancellor and Lord Chancellor in the cases cited, to consider this point as settled. His decision therefore was, that the husband took an interest in this bequest, and that it passed to the assignees, the plaintiffs. The demurrer was therefore overruled.

*Mauzy v. Parker*, at Westminster, Nov. 5th and 7th, 1834.

### King's Bench.

[Before the four Judges.]

MANSLAUGHTER.—CERTIORARI.—BAILING  
DEFENDANT.—CORONER'S JURY.

*Where it is sought to bail a defendant who has been committed on a charge of manslaughter, and the affidavits of persons are produced, the object of which is to explain the circumstances, so as to shew the case to be a fitting one for the interference of the Court; but it does not appear that those witnesses tendered their evidence before the coroner's jury, a statement must be given why they did not appear before the coroner's jury.*

This was an application to bail a person named *Mills*, who had been committed on a charge of manslaughter, pursuant to the coroner's inquisition. Several affidavits were produced, the object of which was to shew that the conduct of the defendant had been without blame. It did not, however, appear that the persons making the affidavits had presented themselves as witnesses before the coroner's jury; nor was any reason given for their not doing so.

Lord Denman, C. J.—There appears to be no reason here assigned why these persons who now swear themselves to have been acquainted with the facts of the case did not tender their evidence before the coroner and his

<sup>4</sup> 4 Sim. 141.

<sup>5</sup> 2 Russ. & Myl. 197—204.

<sup>6</sup> 2 Russ. & Myl. 208.

<sup>7</sup> Ibid. 210.

<sup>8</sup> 2 Russ. & Myl. 208. See also *Knight v. Knight*, 8 L. O. 107.

jury. The Court of the coroner is an open Court, that they might, if they had thought proper, have entered as witnesses, if they had stated themselves to be acquainted with the transaction. They ought, at least, to account for their omission to tender their evidence. If this were not required, matters would come to this, that on an application of this kind, a case would apparently be made out for bailing a defendant, and then when the depositions came up, on the face of them it would probably appear that the committal was quite correct, and that there was, consequently, no ground for interfering, by admitting the defendant to bail. It is necessary, on all such applications, that a *prima facie* case should be made out, in order to entitle this Court to interfere. The other Judges concurred.

Rule refused.—*Res v. Mills*, M. T. 1834. K. B. F. J.

**EJECTMET.—TENANT IN POSSESSION.—AGENT.**

*Where service in ejectment may be effected on the agent of the tenant in possession.*

Motion for judgment against the casual ejector. The affidavit did not swear positively who was the tenant in possession, but merely stated the deponent "believes" that the facts were these.—The house was used as a gambling-house, and it was impossible for any person having the appearance of an attorney to gain admission. A grating was fixed in the door, through which it could be seen who approached; and that many fruitless efforts had been made to find out who was the tenant in possession.

The Court thought that under the peculiar circumstances of the case, a strict compliance with the rule of court might be dispensed with; and thereupon granted a rule *nisi*, directing the service to be on the person at the door.

Rule *nisi* accordingly.—*Doe dem. George v. Roe*, M. T. 1834. K. B. F. J.

**ATTORNEY AND CLIENT.—ADMISSION OF AN ATTORNEY.—CERTIFICATE.—COSTS.**

*Although an attorney may have been uncertificated at the time of doing business, he may under certain circumstances recover his costs.*

A rule *nisi* for entering a nonsuit was in this case obtained on the part of the defendant; the facts appeared to be these: the plaintiff in this cause was an attorney, and brought this action for the recovery of the amount of his bill for business done by him for the defendant. The defence was, that the plaintiff at the time he transacted the business, was incompetent to practise as an attorney, he being uncertificated; the plaintiff, it appeared, missed taking out his certificate at the usual time, but before the expiration of year he took it out; the business was done during the uncertificated interval. A verdict was found for the plaintiff, with leave to the defendant to move to set aside that verdict and enter a nonsuit.

On shewing cause against this rule, it was contended, that all that the 37 G. 3, c. 90, required, was, that the certificate should be taken out within the year. It was clear that the clauses contained in that and subsequent acts, which prohibit the plaintiff's right to recover his costs, only referred to cases of wilful neglect in taking out certificates.

In support of the rule, the 54 G. 4, c. 144, s. 13, was referred to, which expressly directed that all certificates should be taken out between the 15th of November and the 16th of December.

*Per Curiam*.—We are of opinion, that the statute applies to cases of wilful neglect only; such wilfulness not having been proved by the evidence on the part of the defendant, we think the plaintiff is entitled to recover.

Rule discharged.—*Bowler v. Brown*, M. T. 1834. K. B. F. J.

**King's Bench Practice Court.**

**SECURITY FOR COSTS.—LACHES.—WAIVER.**

*Obtaining time to plead, does not in all cases prevent the defendant from requiring security for costs.*

In this case a rule *nisi* had been obtained calling on the plaintiff to give security for costs, he being abroad. It appeared that in the month of June last, the plaintiff commenced the action; he did not declare till the following October. The defendant afterwards took out a summons to enlarge the time for pleading, and since that step obtained the above rule.

On shewing cause against this rule, affidavits were produced, swearing, that the defendant was perfectly aware that the plaintiff was abroad, previous to his obtaining time to plead. It was contended, that the circumstance of his obtaining time to plead rendered this application too late, it being contrary to the directions of § 98 of H. T. 4 W. 4.

*Littledale, J.*, thought the defendant pursued a proper course, by not endeavouring to obtain security for costs until he was convinced that the plaintiff was in earnest. The present rule therefore must be made absolute.

Rule absolute.—*Fry v. Wills*, M. T. 1834. K. B. P. C.

**FRIVOLOUS DEMURRER.—JUDGMENT FOR WANT OF A PLEA.**

*If a demurrer is not clearly frivolous, according to the statement in the margin, it cannot be set aside as frivolous, pursuant to the rules of H. T. 1834.*

In this case an application was made to set aside a demurrer, upon the ground of its being frivolous in the statement in the margin, and, consequently, a non-compliance with 2 Reg. Gen. H. T. 4 W. 4. (Practice Rules.) It is by that rule ordered, that if any demurrer be delivered, with a frivolous statement in its



margin, it may be set aside, and leave be given to sign judgment as for want of a plea. The ground of demurrer was, that the declaration stated the defendant to be indebted to "the plaintiff," instead of "the plaintiffs," although two persons were suing. This was stated in the margin of the demurrer. On the part of the plaintiffs, this was contended to be frivolous, as the declaration shewed a sufficient consideration passing from the plaintiff to the defendant.

*Littledale, J.* thought it a sufficient ground of demurrer, and therefore refused the rule.

Rule refused.—*Tyndall & Another v. Ulleshorne*, M. T. 1834. K. B. P. C.

#### TENDER.—UNLIQUIDATED DAMAGES.—PAYMENT INTO COURT.

*If an action is brought for the non-repair of a house, a tender will not be allowed.*

This was an action of *assumpsit*, brought by a landlord against his tenant, for the purpose of recovering damages for the non-performance of an agreement which the defendant had entered into. The declaration contained breaches for not properly repairing a house and premises, and not leaving the fixtures in the condition in which they were when the agreement was made.

*Littledale, J.* thought that the right to tender was barred by the nature of the claim. He, however, gave permission to take it before the full Court; but which subsequently refused the rule.

Rule refused.—*Barrett v. Dearle*, M. T. 1834. K. B. P. C.

#### SHERIFF'S COURT.—JUDGMENT AS IN CASE OF A NONSUIT.

*On a writ of trial, the plaintiff must proceed to try within a reasonable time.*

A rule *nisi* had been obtained in this case for judgment as in case of a nonsuit. It was an issue directed to be tried before the under-sheriff, and notice of trial had been given, which was afterwards countermanded at the request of the plaintiff's attorney. This was alleged as the cause of not proceeding to trial.

*Littledale, J.* thought the excuse sufficient, and discharged the rule, on the plaintiff giving an undertaking to try at the first sitting of the under-sheriff, after the expiration of one month.

Rule discharged accordingly.—*Banks v. Wright*, M. T. 1834. K. B. P. C.

#### Common Pleas.

##### CAPIAS.—COPY OF WRIT.—SERVICE.—DEFENDANT'S RESIDENCE.

*The copy of a writ of capias described the defendant as of "Leman-street, Goodman's-*

*fields," omitting to mention the county. Query—ought it to have been mentioned?*

This was an application to set aside the copy of the writ of *capias*, and cancel the bail-bond, on the ground that the defendant was described of "Leman-street, Goodman's-fields," without stating the town or county where that place is situate; and also that the plaintiff's attorney's residence was described simply as "Leman-street." On shewing cause it was contended that the writ being addressed to the sheriff of Middlesex, and requiring him to take the defendant if found in his bailiwick, it was unnecessary to add the name of the county to his residence.

*Tindal, C. J.*—The question is, whether the defendant's residence is sufficiently described in the writ of *capias*, by naming the street without the county. The 4th section of the Uniformity of Process Act applies to the writ of *capias*, but contains no such requisition. It is not necessary that it should, for the writ is addressed to the sheriff, who can only execute it in his bailiwick. The form in the schedule of the act leaves a blank for the county in the summons, but none in the *capias*.

*Gaoler, J.*, concurred.

*Vaughan, J.*, thought the description of the residence too general.

*Bonquet, J.*, thought the 4th section of the act should be construed with reference to the first, which clearly requires the county to be stated.

The Court being equally divided, the rule was not made absolute.

No rule.—*Bordu v. Levy*, M. T. 1834. C. P.

#### ANSWERS TO QUERIES.

##### Law of Property and Conveyancing.

DEVISE.—HEIR. P. 512, VOL. VIII.

I believe there is no doubt but that the word "estate" will pass the fee. In *Doe d. Burkhitt v. Chapman*, 1 Hy. Black. 223, a devise of "all the rest and residue of my estate, of what nature or kind soever," was held by the Court of Common Pleas to include real as well as personal property, though accompanied by limitations peculiarly applicable and usually applied to personal property only. And see *Holdfast dem. Corper v. Martin*, 1 T. R. 411. And in *Doe d. Willey v. Holmes*, 8 T. Rep. 1, it was held that under this devise, "I give my house and furniture to A., whom I make executrix, she paying all my debts and legacies: I likewise leave to A. all the rest of my personal estate," A. took a fee in the freehold. The word "estate" will carry a fee in a will, if not restrained by other words. *Roe d. Child v. Wright*, 7 E. R. 259. And see *Gardner v. Harding*, 3 Moore, 565; and *Wilce v. Wilce*, 7 Bingham, 664. 8FMS.

## SETTLEMENT. P. 142.

Permit me to correct an error in an answer of mine to a query of X. Y. Z.'s. In it I inserted the answer of J. W., in which I made him say, "previously to the 3 & 4 W. 4. c. 74, a vested remainder could only be recovered by fine;" whereas he in truth said, "could only be conveyed by fine." It is obvious, from what follows in my answer, that the error was unintentional.—My opinion that the second son is entitled in tail, must be understood with this qualification, viz.: that neither the tenants for life, if the recovery was suffered before the recent Act for the Abolition of Fines and Recoveries came in force, or the protector, if the disposition was made since, joined in suffering the recovery or making the disposition. If they did, the recovery or disposition would be good against the second son. SPES.

## Common Law.

## INSOLVENT.—SOLICITOR'S COSTS. P. 63.

It seems unnecessary to consider the question asked by "A Constant Reader," as the assignment of the emoluments of the livings to trustees would be void, as creating a charge upon the benefices. *Shaw v. Pritchard*, 10 B. & Cress. 241. SPES.

## Law of Landlord and Tenant.

## REMOVING FIXTURES. P. 143.

Unless the erection be affixed to the freehold, by being let into the soil, or is, by means of nails, mortar, or the like, united to it, it remains a mere movable chattel.—*Vide Woodfall*, by Harrison, p. 470; and *Elwes v. Maw*, 3 East, 38. GRADUS.

## BEQUEST.—FIXTURES. P. 143.

In the case of *Lawson v. Salmon*, 1 H. Bl. 259n, Lord Mansfield said, "All the old cases, some of which are in the year books and Brooke's Abridgement, agree, that whatever is connected with the freehold, as wainscot, furnaces, pictures fixed to the wainscot, even though put up by the tenant, belong to the heir." And in *Elwes v. Maw*, 3 East, 38, Lord Ellenborough said, "Between heir and executor the rule obtains with the utmost rigour in favour of the inheritance, and against the right to disannex therefrom, and to consider as a personal chattel any thing which has been affixed thereto." From these cases it seems that the fire-grates would go the trustees as fixtures. GRADUS.

## UTENSILS DISTRAINABLE. P. 112.

The tools of a man's trade are privileged from distress whilst any other sufficient distress may be found on the premises. Co. Lit. 47a. Also, whatever is in a man's present

use is, during that time, privileged from distress. See *Gorton v. Fulkner*, 4 T. R. 565, and the cases referred to in that judgment; therefore in the case stated by "Lex," if any other sufficient distress could be found, or the mangle were in actual use, it could not be distrained for rent. M. T.

See *Simpson v. Hartop*, Willes, 512; 2 Shower, 127. A. Z.

## QUERIES.

## Law of Landlord and Tenant.

## SELLING DISTRESS.

In distress for rent, the landlord cannot sell until the expiration of 5 days, i. e. 5 times 24 hours, and he must not keep the goods on the premises beyond that time, or he is a trespasser. A distress was taken at 8 o'clock P. M. (before sunset in summer); the five days expire at the same hour on the 6th day inclusive; the goods remain on the premises, a replevin having been expected; and much of the goods being of a ponderous nature, could not be removed in a short time: it is too late an hour to sell. What ought to be done in this case by the landlord? Can the tenant justify obstructing or ousting him from the premises? And has not a landlord in all cases reasonable time allowed to him by law for selling or removing the goods after the expiration of the five days? J. A. M.

## Practice.

## RETURN OF EXECUTION.

Can any of your correspondents inform me for what period a writ of execution "returnable immediately," is in force? D. W. C.

## PROCESS.—PART PAYMENT.

The indorsee of a bill of exchange for 30*l.*, sues drawer and acceptor by writs of *capias*; the drawer is arrested, and the plaintiff thinks it prudent to accept 15*l.* from him, and give time for payment of the balance, if not recovered from the acceptor. It appears clear that the plaintiff, after receipt of the 15*l.* cannot upon the writ of *capias* against the acceptor, arrest him. Must he sue out a writ of *summons* against the acceptor to recover the balance? if so, how can he recover the costs of the writ of *capias*? This depends upon the language of the Uniformity of Process Act.

T. T. T.

## Common Law.

## GAME LAWS.—SURCHARGE.

By what particular act and section is the Surveyor of Taxes empowered to charge an

unlicensed person with the duty on a game certificate, and thereby compel him to appeal before the Local Commissioners, and swear that he has not killed or been in pursuit of game, &c., in order to get the charge dismissed? And can the Commissioners confirm the same without substantial evidence that the party charged has been in pursuit of game? In other words, can the Commissioners oblige the party charged, to pay the duty, unless *he will swear* that *he has not killed*, or been in pursuit? and are there any, and what decisions, on the above points?

S. W.

#### GAME LAWS.—RABBITS.

Is the exception in the Act, 52 G. 3, c. 93, empowering tenants of lands to take and destroy rabbits without a game certificate, "either by himself, herself, or themselves, or by his, her, or their direction or command," repealed, and can a person since the passing of 1 & 2 W. 4, c. 32, shoot rabbits on a farm by the *tenant's* direction, *without a certificate*, if the landlord has not reserved them?

S. W.

#### Acts of Property and Conveyancing.

##### PARTNERSHIP LIABILITY.

*A.* and *B.*, not being partners in general, jointly purchase goods of *C.*, in a single transaction. *A.* pays *C.*, at his request, one moiety of the debt, and *C.* acknowledges that he has no further demand on *A.*, but that he will look to *B.* alone for the other moiety; who not having paid same, *C.* commences an action against *A.* and *B.* jointly for the amount. Can *A.* in any, and what mode, successfully defend himself against this action? Or has he a remedy in equity? Or what course should be taken? And would there be any difference if *C.* had given *A.* a receipt in full of all demands?

J. A. M.

##### NEW TRUSTEE.

Land, real estate, is devised to *A.* and *B.*, upon certain trusts; no power of appointment of a new trustee is contained in the will. Can *A.*, during the life-time of *B.*, appoint a new trustee in his, *A.*'s place? or can the survivor, after the death of the other, appoint a new trustee? If not, what will become of the property and the trusts after the death of both of them?

J.

##### FEOFFEES OF PARISH LANDS AND CHARITY LANDS.

Does the Act 52 G. 3, c. 12, or any other act, divest such lands from the feoffees or trustees, in whom the same were previously vested by the original deed or will, or by subsequent appointment, and vest the same in the parish officers, as trustees for the time being *virtute officii*?

J. A. M.

##### LEGACY RECEIPTS.

In the ordinary case of an executor or administrator passing an account with the Stamp Office for the residue, and paying the duty, before he does or is enabled to make final distribution amongst residuary legatees, or next of kin, (because this is often required before the estate is, or can be wholly converted into money, and is conducted upon a hypothetical valuation of effects not so converted, such as outstanding doubtful debts,) must receipts afterwards taken for money paid over on account of such residue have any and what stamp—the full legacy duty having been paid and stamped on the account passed, and the common receipt stamps not applying to legacies?

J. A. M.

##### STAMP DUTY.—SETTLEMENT.

In a marriage settlement, there is a covenant by the intended husband for payment by his executors, on a contingent event, of 5000*l.* upon certain trusts depending on such contingency. Does the settlement stamp of seven pounds attach? or is the common deed stamp of 1*l.* 15*s.* sufficient, considering the words of the Stamp Act (55 G. 3 c 184, sched. 1602), "any definite and certain principal sum or sums of money," and that in the above case there is no investment, nor does the sum at present exist, nor may the contingency happen to call it into existence, or render it payable, nor becoming payable, may it be recoverable by reason of insolvency or otherwise?

J. A. M.

#### THE EDITOR'S LETTER BOX.

We will attend to any intelligence with which we may be favored, relating to deceased members of either branch of the profession. The particulars for insertion in our *Legal Obituary*, which will be published in the Supplement of this month, should be concise, and the dates accurately stated.

We shall be obliged to "Omega," to inform us the date of the alterations he refers to, for, on inquiry, we are told that none have been made since the 21st of December, 1833, with which our readers are already in possession.

The Queries and Answers of O. P. Q.; "A Subscriber;" and "A Constant Reader," have been received.

The further names of Country Perpetual Commissioners shall be given in the Monthly Supplement: we shall be glad to receive the information in due time.

The Letters of E. J. and M. shall receive early attention.

One of our Subscribers appears to forget, that part of the information which the work contains, cannot be given except in a Monthly Supplement. Double numbers are occasionally issued by monthly, and even quarterly works. Our interest, as well as inclination and convenience, will render these additional publications as few as possible.

# The Legal Observer.

Vol. IX. SATURDAY, JANUARY 10, 1835. No. CCXLVII.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LAWYERS IN THE NEW PARLIAMENT.

It is not our duty to notice political matters farther than as they relate to the profession or its members. We therefore advert to the General Election, now in progress, in reference only to the Lawyers who have been already returned to Parliament, or who are candidates for that honor. As we write whilst several of the elections are actually proceeding, the result of some of them may be known to our readers before the publication of the number; nevertheless we deem it desirable to put on record the state of things during the present week.

We shall include the names of some members who are not in practice, but who have formerly been called to the bar, or practised as solicitors.

The following members have been returned:

Right Hon. Sir C.	
Sutton	- Cambridge University.
Mr. Serjt. Wilde	- Newark.
Mr. Horace Twiss	- Bridport.
Mr. Tancred	- Banbury.
Dr. Nicholl	- Cardiff.
Mr. Neeld	- Chippenham.
Mr. D. W. Harvey	- Southwark.
Mr. J. B. Carter	- Portsmouth.

Abercrombie, Right	
Hon. James	- Edinburgh.
Beckett, Right Hon.	
Sir J.	- Leeds.
Campbell, Sir J.	- Edinburgh.
Ewart, W.	- Liverpool.
Faithfull, G.	- Brighton.
Fergusson, R. C.	- Kirkudbright.
Follett, Sir W. W.	- Exeter.
Freshfield, J. W.	- Falmouth and Penryn
Godson, R.	- Kidderminster.
Goulbourn, Serjt.	- Leicester.
Halcomb, J.	- Warwick.
Hill, M. D.	- Hull.
Horne, Sir W.	- Mary-le-bone.
Knight, J. L.	- Cambridge Borough.
Lee, Dr.	- Aylesbury.
Lee, F. V.	- Stafford.
Lennard, J. B.	- Maldon.
Lushington, Dr.	- Tower Hamlets.
Marshall, W.	- Carlisle.
Pemberton, T.	- Ripon.
Pepys, Right Hon. Sir	
C. C.	- Malton.
Phillpotts, J.	- Gloucester.
Pollock, Sir F.	- Huntingdon.
Rice, Right Hon. T. S.	- Cambridge Borough.
Rolfe, R. M.	- Falmouth and Penryn.
Scarlett, R. C.	- Norwich.
Spankie, Serjt.	- Finsbury.
Stewart, J.	- Barnstaple.
Talfourd, Serjt.	- Reading.
Tooke, W.	- Truro.
Wilks, J.	- Boston.

The following are the candidates in England, Wales, and Scotland, so far as we are acquainted, at the time we go to press:

## ABSTRACTS OF RECENT STATUTES.

PREVENTION OF SMUGGLING AMENDMENT ACT.  
4 W. 4, c. 13.

This is "An act to repeal so much of an act of the last session of parliament, for the prevention of smuggling, as authorizes magistrates to sentence persons convicted of certain offences to serve his majesty in his naval service, and to alter and amend the said act," and it received the royal assent on the 22d of May, 1834. It recites the 3 & 4 W. 4, c. 53, intitled "An act for the Prevention of Smuggling;" and that it is expedient to repeal so much of that act as authorizes and requires justices of the peace to order persons convicted of certain offences therein mentioned to be carried and conveyed on board any of his majesty's ships, in order to serve his majesty in his naval service for the term of five years; and to substitute other provisions in lieu thereof: and that it is also expedient to amend certain other parts of the act: it is therefore enacted,

1. That from and after the passing of this act, so much of the said act as authorizes and requires justices of the peace to order persons convicted of certain offences therein mentioned to be carried or conveyed on board any of his majesty's ships, in order to serve his majesty in his naval service for the term of five years, and so much of the said act as imposes certain pecuniary penalties for any of the offences hereinafter next mentioned, shall be repealed.

2. That every person, being a subject of his majesty, who shall be found or discovered to have been on board any vessel or boat liable to forfeiture under the said or any other act relating to the customs for being found or discovered to have been within any of the distances in the said act mentioned from the united kingdom, or from the Isle of Man, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such vessel or boat to forfeiture, or who shall be found or discovered to have been within any such distances as aforesaid on board any vessel or boat from which any part of the cargo or lading of such vessel or boat shall have been thrown overboard, or staved or destroyed to prevent seizure; and every person, not being a subject of his majesty, who shall be found or discovered to have been on board any vessel or boat liable to forfeiture for any of the causes aforesaid, within one league of the united kingdom or of the Isle of Man; and that all persons who are assembled to the number of three or more for the purpose of unshipping, carrying, conveying, or concealing any spirits or tobacco, or any tea or silk (such tea or silk being of the value of twenty pounds or more,) liable to forfeiture under any act relating to the customs or excise; and that every person who shall by any means procure or hire, or shall depute or authorize any other to procure or hire, any person or persons to assemble for

the purpose of being concerned in the landing or unshipping or carrying or conveying any goods which are prohibited to be imported, of the duties for which have not been paid or secured; and that every person who shall obstruct any officer or officers of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer or officers of customs or excise, or any person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, in the execution of his or their duty, or in the due seizing of any goods liable to forfeiture by the said act or any other act relating to the customs, or who shall rescue or cause to be rescued any goods which have been duly seized, or who shall attempt or endeavour to do so, or shall before or at or after any seizure stave, break, or otherwise destroy any goods to prevent the seizure thereof or the securing the same; shall, upon being duly convicted of any of the said offences before any two justices of the peace, be adjudged by such justices for the first offence to be imprisoned in any house of correction, and there kept to hard labour for any term not less than six nor greater than nine calendar months; and for the second offence for any term not less than nine nor greater than twelve calendar months; and for the third offence, or any subsequent offence, for twelve calendar months.

3. Justices of limited jurisdictions not having houses of correction, to commit to some neighbouring house of correction.

4. Justices may order imprisonment in lieu of penalty; for first offence for six or nine months, and for a second offence six or twelve months, with hard labour, for not less than six nor more than twelve months.

5. Justices may commute the sentence of hard labour for imprisonment, where the offender is a female, or is incapable of hard labour from age or sickness: provided that in all such cases the cause of mitigation shall be stated in the warrant of commitment.

6. Where a person is liable to be committed to hard labour, and it appears that he has before been convicted of a similar offence, the justices may extend the period of imprisonment to a period not less than nine nor more than twelve months.

7. That it shall not be necessary in such amended warrant or commitment to state or refer to the former conviction.

8. And reciting that by the said act power is given to justices of the peace to mitigate penalties in certain cases, it is now enacted, that such power shall be exercised by such justices only where the offender is convicted of a first offence against the said act or any other act relating to the customs, and not where such offender is convicted of a second or other subsequent offence of that description.

9. The Treasury or Commissioners of Customs may release persons committed under this act.

10. All informations before justices of the peace for any offences committed against this act, and all convictions for such offences, and

warrants of justices of the peace founded upon such convictions, shall be drawn respectively in the form or to the effect in the schedule to this act annexed.

11. And reciting that his late majesty King George the Third, by his royal proclamation bearing date the 1st day of January 1801, ordered and appointed what ensign or colours should be borne at sea by merchant ships or vessels belonging to any of his majesty's subjects of the united kingdom of Great Britain and Ireland, and of the dominions thereunto belonging, thereby charging and commanding all his majesty's subjects whatsoever that they should not presume to wear in any of their ships or vessels his majesty's jack, commonly called the Union Jack, nor any pendants nor any such colours as are usually worn by his majesty's ships, without particular warrant for their so doing from his majesty, or his high admiral of Great Britain, or the commissioners for executing the office of lord high admiral for the time being; and also commanding his majesty's subjects that without such warrant as aforesaid they should not presume to wear on board their ships or vessels any flags, jacks, pendants, or colours made in imitation of or resembling those of his majesty, or any kind of pendant whatsoever, or any other ensign than the ensign described in the margin of the said proclamation: And that by an act of the last session of parliament (3 & 4 W. 4, c. 53), intituled "An act for the prevention of smuggling," a penalty of fifty pounds is imposed on every person who shall wear, carry, or hoist in or on board any vessel or boat whatever belonging to any of his majesty's subjects without particular warrant for that purpose, his majesty's jack, or any pendant, ensign, or colours as therein mentioned: and reciting that it is expedient that all doubts that may have been entertained as to the law on this subject should be removed, and that further provision should be made for carrying the said proclamation into effect: it is therefore enacted and declared, that from and after the passing of this act it shall not be lawful for any of his majesty's subjects whomsoever to hoist, carry, or wear in or on board any ship, vessel, or fishing boat, or any other vessel or boat whatever, whether merchant or otherwise, belonging to any of his majesty's subjects, his majesty's jack commonly called the Union Jack, or any pendant or any such colours as are usually worn by his majesty's ships, or any flag, jack, pendant, or colours whatever made in imitation of or resembling those of his majesty, or any kind of pendant whatsoever, or any ensign or colours whatever other than those prescribed by the said proclamation; and that if any person or persons shall nevertheless presume to hoist, carry, or wear in or on board any ship or vessel, fishing boat, or other vessel or boat whatever, belonging to any of his majesty's subjects, whether the same be merchant or otherwise, his majesty's jack commonly called the Union Jack, or any pendant or colours such as are commonly worn by his majesty's ships, or any jack, flag, pendant, or colours whatever

made in imitation of or resembling those of his majesty, or any kind of pendant whatever, without such warrant as aforesaid, or any other ensign or colours than the ensign or colours prescribed by the said proclamation to be worn, then and in every such case the master or other person having charge of such ship, vessel, or boat, or the owner or owners thereof, of being on board the same, and every other person so offending, shall for every such offence forfeit and pay a sum not exceeding five hundred pounds, to be recovered, with costs of suit, either in the high court of admiralty of England, or in any vice admiralty court in his majesty's colonies, or in any of his majesty's courts of King's Bench or Exchequer at Westminster or Dublin, at the suit of his majesty's attorney general, or in the courts of Session or Exchequer in Scotland respectively: and that it shall be lawful for any officer of his majesty's navy or marines belonging to any of his majesty's ships, or any officer of the customs or excise, to enter on board any ship, vessel, or boat so hoisting, wearing, or carrying any jack, flag, ensign, pendant, or colours prohibited by the said proclamation and by this act to be hoisted, worn, or carried, and to seize and take away the same, and the same shall thereupon become forfeited.

12. Act may be altered.

## CONSTRUCTION OF THE UNIFORMITY OF PROCESS ACT.

### No. III.

#### CAPIAS.

THE decisions on the writ of *capias* will form the subject of the present article.

With respect to the præcipe for this writ, it has been decided in *Usborne v. Pennell* (2 Dowl. Prac. Cas. 801), that the omission of the sum for which the defendant is to be held to bail is no ground for setting aside the writ.

This writ must be directed to the sheriff or other officer who is to execute the process, and must describe him correctly. Therefore a writ directed to the "sheriff" of London, instead of the "sheriffs," was held to be defective. (*Barker v. Weedon*, 2 Dowl. Prac. Cas. 707; *Nicol v. Boyne*, *Id.* 761.) And a writ of *capias* directed to the "sheriffs," instead of "sheriff," was held to be irregular. (*Jackson v. Jackson*, 3 Dowl. Prac. Cas. 182.) So, also, a writ was held to be irregular because it was directed to the sheriff of "Middlesex," instead of "Middelsex." (*Hodgkinson v. Hodgkinson*, 2 Dowl. Prac. Cas. 535.)

The defendant's name must be properly given in the writ; but a variance in the

name of a defendant in a writ, where it is *idem sonans* with the real name, is not material. (*Webb v. Lawrence*, 2 Dowl. Prac. Cas. 81.)

The residence of a defendant should also be introduced into the writ. If the place of residence of the defendant is not inserted in the writ of *capias* it may be set aside at his instance, though his residence is stated in the copy served. (*Rice v. Huxley*, 2 Dowl. Prac. Cas. 230.) But it is not necessary that a particular description should be given of his place of residence, as it will be sufficient to give the best description the plaintiff can of the place where he is likely to be found. (*Welsh v. Langford*, 2 Dowl. Prac. Cas. 498; *Buffle v. Jackson*, *Ib.* 505.) A variance between the description of the defendant's residence in the affidavit of debt from the *capias*, is immaterial. (*Ib.*) In *Kenrick v. Nanney* (1 Dowl. Prac. Cas. 58; 2 L. O. 270, S. C.) it was held by *Taunton, J.*, that the sheriff was not bound to execute bailable process in which the place of abode and addition of the defendant were not indorsed, although at the time of receiving the *capias* he made no objection to the defect.

If the defendant's residence is sufficiently described in the writ, with the exception of the county, that defect is supplied by the direction to the sheriff. (*Perring and others v. Turner*, 3 Dowl. Prac. Cas. 15; *Border v. Levi*, *Ib.* 150; *Webb v. Lawrence*, 2 Dowl. Prac. Cas. 81.)

If the copy of the writ served on the defendant is materially defective, it is a ground for discharging the defendant on entering a common appearance, although the writ itself is right. (*Street v. Carter*, 2 Dowl. Prac. Cas. 671.) But the omission of immaterial words or particles in the writ is not an irregularity of which the Court will take notice, if the omission does not alter the meaning of the writ. (*Forbes v. Mason*, 3 Dowl. Prac. Cas. 104.)

The omission of the day of the month in the teste of the copy of the writ, although the month itself is named, is fatal. (*Perring and others v. Turner*, 3 Dowl. Prac. Cas. 15.) If the copy of a *capias* delivered to the defendant differs in its date from the original, the Court will not allow it to be amended. (*Byfield v. Street*, 2 Dowl. Prac. Cas. 739.)

In describing the form of action in which the writ is issued, it must shew, in general, that it is one in which an arrest is allowed, in accordance with the form contained in the schedule annexed to 2 W. 4, c. 39,

§ 4. (*Richards v. Stuart*, 2 Dowl. Prac. Cas. 752.) A writ of *capias* to answer the plaintiff in an action of trespass on the case upon promises, is merely irregular, and not void; and a defendant, to avail himself of the objection, must apply in proper time. (*Gurney and others v. Hopkinson*, 3 Dowl. Prac. Cas. 189.)

As to the reference in the writ to the warning placed at the foot of it, or indorsed on it, the Court of King's Bench has decided that if the warning is placed at the foot of the writ, it is only necessary, in the body of it, to introduce the words "hereunder written," and not "indorsed hereon" besides. (*Bridgman v. Curgenvven*, 3 Dowl. Prac. Cas. 1.)

With respect to the indorsement of the amount in which the defendant is to be held to bail, it has been decided in *Webb v. Lawrence* (2 Dowl. Prac. Cas. 81), that "bail for 40*l.* and upwards," though uncertain, is sufficient, since the late rule of 1 Reg. Gen. H. T. 2 W. 4, § 10.

Several decisions have been pronounced with regard to the indorsement of the amount of debt and costs claimed by the plaintiff. In *Rowland v. Dakeyne and others* (2 Dowl. Prac. Cas. 832), and *Smart, assignee of the Sheriff of Middlesex, v. Lovick and others* (3 Dowl. Prac. Cas. 34), that in an action on a bail-bond or a replevin, it is not necessary to make such an indorsement. In *Coppelo v. Brown* (3 Dowl. Prac. Cas. 166), it was decided that the indorsement on a writ that the plaintiff claims a sum for debt, with interest thereon from a certain day, is sufficiently certain. The Court of Common Pleas, in *Shirley v. Jacobs* (*Ib.* 101), decided, that where in the indorsement the word "execution" was introduced, instead of the word "service," the indorsement must be amended on payment of costs, and the plaintiff's proceeding stayed for four days. See *Urquhart v. Dick*, *Ib.* 17, in the King's Bench.

With respect to the indorsement of the plaintiff's, or his attorney's residence, it was decided in *Smith v. Pennell* (2 Dowl. Prac. Cas. 654), that the omission of the word "London" was a sufficient ground for setting aside the copy of the writ; and six days were held not to be too great a lapse of time to preclude a motion for setting aside the copy for irregularity on this ground. (*Ib.*)

The Court of Exchequer decided, in *King v. Monkhouse* (2 Dowl. Prac. Cas. 221), that "Gray's Inn Square, London," was a good description of the plaintiff's

residence, who was an attorney, although it was sworn that Gray's Inn was not in London.

In *Moore v. Thomas* (2 Dowl. Prac. Cas. 760) it was decided, that if a sheriff does not indorse on the *capias* the day of its execution, pursuant to 4 Reg. Gen. M. T. 3 W. 4, the remedy is to require him to amend his return, and make compensation to the plaintiff for damages accruing through his neglect.

## REVIEW.

*A Treatise on Copyhold, Customary Freehold, and Ancient Demesne Tenure, with the Jurisdiction of Courts Baron and Courts Leet.* By John Scriven, Esq., Serjeant at Law. *Third Edition, incorporating all the late cases on the above subjects. Also an Appendix, containing Rules for holding customary Courts, Courts Baron, and Courts Leet: Precedents of Court Rolls, Deputations, and Copyhold Assurances, and the Relative Acts of Parliament.* London: Henry Butterworth.

This work comprises not only the whole of the law on the various Tenures of Copyhold, Customary Freehold, and Ancient Demesne; but the Practice of Courts Baron and Courts Leet, and the several Precedents belonging to this branch of the Law of Property, and the Practice of Conveyancing.

The delay in publishing the second volume has been fully compensated by the manner in which it has been perfected,—carrying the important branch of law to which it relates, down to the present period, and forming with the first volume, one of the most complete books now extant,—ranking, as it must for its completeness, with Sugden's *Vendors and Purchasers*, and other works of similar professional estimation.

The 1st chapter, on the Nature and Properties of Manors; the 2nd, on the Antiquities and distinguishing Properties of Copyhold Tenure; the 18th, on Customary Freeholds or Privileged Copyholds; and the 19th, on Ancient Demesne, should be read with great attention by every student of the law of real property; and the whole work is of great value to every one in any way interested in copyhold property. To enable the reader to form an estimate of the general utility and extent of the labours of the learned author, we shall state the principal subjects comprised in his work. They are as follow:—

1. The Origin of Manors, and their nature; their determination, suspension, and revival: under which head are considered the conflicting authorities relating to their division, the severing of demesnes, the granting of waste lands, and their allotment under the Inclosure Acts; the customs of manors, with reference to their being immemorial, reasonable, and certain; the mode of trying customs; their construction; their effect on descents, limitations, and estates, &c.

2. The Antiquity of Copyhold Tenure; its incidental and collateral qualities; the nature of the tenure; claims for dower, extents, judgments, debts, sequestration, marshalling assets; lunatics, infants, curtesy, &c.

3. The law relating to the Lord of the Manor, his qualifications, grants, &c.; the Steward, his office and power; the Deputy and Sub-deputy, and the Bailiff and Reeve.

4. *Surrenders*, considered as a medium of transfer, their effect on contingent and reversionary interests; their construction, limitations, conditions, revocation, amendment, enforcing them, wills, marriages, joint-tenants, presentments, &c.

5. *Devise*. The law relating to wills of copyhold, surrenders, powers, creditors, sale, infant, trustees, executors, heirs, estate-tail, feme covert, unadmitted devisee, revocations, residues, election, &c., including an examination of the cases on the construction of wills, with relation to the words which pass copyhold interests.

6. *Admittance*. How enforced against, and by the Lord, its effect, &c.

7. *Fines*. Certain and uncertain; reasonableness; improved value of land; renewals for lives; when and by whom to be paid; joint-tenants, coparceners, tenants in common, assignees of bankrupts; mode of assessment, time of payment, &c.

8. *Services*. Fealty, suit of court, rent of assize, reliefs, heriots; when due and by whom to be rendered; their extinguishment; the lord's remedy, &c.

9. *The Steward's Fees*.

10. *Guardianship*.

11. *Trust Estates*.

12. *Fines and Recoveries*.

13. *Forfeiture*. Feoffment, fine, lease without licence, treason and felony, outlawry, waste, subtraction of suit, &c.: who may take advantage of the forfeiture.

14. *Ejectment*. Trial of title, statute of limitation, &c. *Customary plaints*, possessory actions; real actions; relief in equity.

15. *Evidence* of title by vendor; notice



of contents of court rolls; inspection of court rolls; the steward's minutes and drafts of entries; waste adjoining public roads, &c., bounded by the sea shore; encroachments; common of turbary. *Pleadings, prescription. Waste land. Commonable rights, &c.*

16. *Mandamus* to compel admission or acceptance; against the steward; inspection of court rolls; enrolment of surrender; costs, &c.

*Aid of the Courts of Equity* to compel acceptance and admittance; inspection; boundaries; injunction; forfeiture; multiplicity of suits; bill of peace; fraud; correct proceedings; the king's manors; lapse; trustees; mortgagees; title deeds; freebench; statute of limitations; partitions, &c.

17. *Extinction and Enfranchisement.*

18. *Customary Freeholds or Privileged Freeholds.* Their origin and nature, and how distinguishable from ordinary copyholds in the mode of pleading.

19. *Ancient Demeane.* Nature of the court and the lands to which the tenure extends; Domesday book; the late alterations in the law; how lands may become frank-free, &c.

20. *Jurisdiction of Courts Baron.* Origin and nature of the courts; suitors and steward; feuds; amercements; by-laws; plaints; writs; fruits of tenure; senorial franchises, &c.

21. *Jurisdiction of Courts Leet.* Its history and nature; the present character and practice; election of officers; the jury, and their presentments, &c.

In treating of these various subjects, wherever any conflicting decisions have taken place, the learned serjeant has fully discussed the grounds and distinctions of the several cases, and put the practitioner in possession of all the learning which is to be found in the books, and the best information regarding the usages of conveying counsel.

The Appendix will also be peculiarly useful: it contains the rules to be observed in holding the several Courts, with instructions in special cases; precedents of court rolls, precepts, plaints, licences, deputations, assurances, a table of costs, and other practical and useful information.

The chapters relating to stewards of manors, their appointment, their powers, and fees, will be particularly useful to a large class of our readers; and from this part of the work we shall make some ex-

tracts, which will possess the double advantage of affording an example of the execution of the work and a source of valuable information to a large part of the profession.

"Lord Coke, in his discourse on the antiquity and nature of manors and copyholds, very justly observes, that from the measure of authority and confidence committed to the steward of a manor, the lord would do well to be very careful in making his choice; for, if he be defective in any one of these three qualities, knowledge, trust, or diligence, the lord may be much prejudiced; and he quotes the counsel given to the lord by Fleta:—*Providat sibi dominus de senescallo circumspecto et fidei, qui in legibus consuetudinibusque provinciarum, et officio senescalarum, se cognoscat, et jura domini sui in omnibus tueri affectet, quique ballivos domini in suis erroribus et ambiguis sciat instruere et docere, quique egenis parcere, et nec prece, vel precio, velit à tramite justitiarum deviare, et perversè judicare.*"

"In the King's manors a steward must be appointed by patent. And in the case of *Harria & Jays*, a grant made in full court by the Queen's auditor and surveyor, was held to be void, such officer not having power to retain a steward, and the grant, though made in court, being voluntary, and distinguishable therefore from an act of necessity.

"By the act of 10 Geo. 4. c. 50, § 14, the Commissioners for the time being of His Majesty's woods, forests and land revenues from time to time, are authorised to appoint such persons as they shall think fit to be the stewards of any hundreds, honours, manors, or lordships, being part of the possessions and land revenues of the Crown, to which the act relates, with power and authority to hold and keep all and singular hundred courts, courts leet, views of frankpledge, courts baron, and customary and other courts within the limits and precincts of such hundreds, honours, manors, or lordships respectively, and to perform and execute all things belonging or incident to such offices.

"The appointment of a steward by a corporation must also be by deed; but in all other cases a steward may be appointed by parol, though not for life or years, as it should seem.

"It is, however, usual and proper in every case to constitute the chief steward of a manor by deed; and a proper form of the appointment will be found in the Appendix.

"A steward, whether *de jure* or *de facto*, may execute any ministerial act in court, because the tenants are not compellable to enquire into the lawfulness of his authority. So *Kitch.*, says, 'And if one holds but one court by appointment of the lord, where another hath a patent to be steward, and is absent, surrender taken and entered in this court is good, and also is admittance.' But even a steward *de jure* cannot grant in opposition to the express commands of his principal; neither

would a grant by him diminishing the ancient rent and services, be good.

"The law is as little inclined to examine the imperfections of the steward's person, as the unlawfulness of his authority:—So if the steward of a manor is under any disability, as being an idiot, *non compos mentis*, an outlaw, or excommunicate, yet it is said, that such acts as he shall do as incident to his office, and therefore as judge, or, at least, as custom's instrument, cannot be avoided; and I am apprehensive that, although an infant cannot sit as judge in a court leet, yet that he may preside not only in a court baron, where the suitors are the judges, but also in a customary court, and do all acts of a ministerial nature, provided he be of years of discretion, especially if the office is granted so as to be exercisable by a deputy.

"Mr. Watkins urges, on the authority of *Melwick's case*, and *Dudfield & Andrews*, that a steward may admit not only out of court, but, as a consequence, out of the manor; and he enforces his argument in favour of the steward's power to admit out of court, by adverting to the principle that copyholders had not originally a negative voice upon the admittance of a new tenant, and, therefore, that their presence on an admission is not necessary; but it is to be recollected that the decision in *Dudfield & Andrews*, was not, that a steward may admit, but that he may take surrenders out of the manor; and that in the subsequent case of *Tukely & Hawkins*, there was an express resolution of the Court of C. B., upon motion for a new trial in ejectment, that a steward of a manor may take a surrender of a copyhold out of the manor, but cannot admit out of the manor. And *Melwick's case* is an authority, that a steward of the court of a manor cannot, at any court held out of the manor, make grants or admittances.

"There are authorities, however, which favour the more general opinion that an admittance by the chief steward of a manor out of court, upon a surrender, is good, provided an entry thereof be afterwards made upon the court rolls, and, if out of court, there would appear to be no good reason for denying him the power to admit out of the manor; and it is clear that he may do so by special custom, for instance, where, by immemorial usage, a court is held within one manor, for several distinct manors. The reader is, however, to bear in mind the suggestion which I have made, that admittances, and all other acts, at a court held out of the manor, (and therefore an illegal court,) would be void.

"Coke in his Copyholder [§ 46] in suggesting that in one point the power of a steward exceeds the power of an under-steward, says, 'The steward can make an admittance out of court, and it shall stand good if entry be made in the court roll, that he that is admitted hath paid his fine, and hath done fealty,' but the under-steward, though he may take a surrender out of the court, yet he cannot make any admittance out of court, without especial autho-

rity or particular custom.' And again [§ 45] he states that a 'steward by parol may take surrenders out of court, or make voluntary admittances or [do] any other act incident to the office.'

"And according to *Kitch.*, if an under-steward take a surrender and admit one out of court, without authority of the lord or the chief steward, it is not good; and *Kitch.* adds, 'notwithstanding a lawful steward, as it seems, may take a surrender out of the court, and admittance made out of the court is good, if it be entered in the court roll, that he is admitted, and hath paid his fine, and hath done fealty.' But in p. 165, *Kitch.* says, 'And also the high steward may admit out of the court, by special usage and custom within the manor used'

"It is right, however, to notice that it has even been doubted whether a steward can, under an appointment in writing framed in general terms, or under a parol appointment, accept a surrender, and examine a feme covert as to her voluntary consent, out of court, but there does not appear to be any assignable reason for the doubt.

"In the case of *Housoe v. Wild*, the Court of B. R. decided that the steward of a manor may take a surrender of a copyhold out of the manor

"And it was held by the Court of C. B. in *Dudfield v. Andrews*, that the steward may take a surrender as well out of the manor as out of Court, since it might be a convenience, but could not be prejudicial to any one. And in the above-mentioned case of *Tukely & Hawkins*, a second resolution was, that 'a custom that the steward shall not take surrenders out of the manor, is a void custom.'

"Lord Coke says, 'this is the general custom of the realm, that every copyholder may surrender in court, and need not to allege any custom therefore. So if out of court he surrender to the lord himself, he need not allege in pleading any custom. But if he surrender out of court into the hands of the lord by the hands of two or three, &c., copyholders, or by the hands of the bailiff or reeve, &c. or out of court by the hand of any other, these customs are particular, and therefore he must plead them.'

"Probably Lord Coke did not mean that a surrender into the hands of a steward, out of court, required a custom. At all events it is clear that a surrender into the hands of a steward out of court, or even out of the manor, is good, without pleading a custom for it; and whether the steward is appointed by deed or by parol, and although the surrender be to the steward's own use. And that the steward may upon such a surrender made by husband and wife, take the examination of the wife as to her voluntary consent, in analogy to the power of the commissioners under a *dedimus potestatem*, in the case of a fine of freeholds.

"The distinction between acts of necessity, arising out of the ordinary duties of the office of steward of a manor, and exercisable therefore even without a special authority, and acts in

their nature voluntary, and therefore requiring a special mandate, is very clearly exemplified by Sir Edward Coke in his Copyholder. \* \* \*

"It is certain that an office of trust annexed to the person and concerning the administration of justice, cannot be granted for a term of years, for then it would devolve upon executors or administrators, which might be very inconvenient. And it should seem that even under a grant of the stewardship of a court baron, where the suitors are the judges, to two persons for a term of years, the appointment would determine with the lives of the grantees.

"Under an appointment of two joint stewards, I apprehend that courts may be held by one of them; and that one of two joint stewards may perform all acts of a ministerial nature, as well out of court as in court.

"An office which is partly ministerial and partly judicial, cannot be granted in reversion, not even by the King: *a fortiori* a grant in reversion, of an office wholly judicial, as, for instance, the stewardship of a court leet, would be void.

"But the law distinguishes between an entire office comprehending two parts, one judicial and the other ministerial, as, for instance, the ancient office of auditor of the court of wards, and two offices distinct in themselves, but comprehended under one name, as steward of a manor, embracing the offices of steward of a court leet, and of a court baron.

"The law also makes a distinction between the office of judge of a court of record, and a judicial office exercisable by deputy; therefore I apprehend, that the office of steward of a customary court baron, although of a judicial character, being exercisable by deputy, may be granted in reversion; and even *in futuro*, as it varies from the case of land.

"It is at all events certain, that the King may grant an estate in an office in reversion, or to commence *in futuro*, or upon a contingency; and that a custom may make an office grantable in reversion, in the case of a common person.

"Doubts were formerly entertained whether a grant by a subject, of the stewardship of a manor, for life, was good, except by custom or act of Parliament; but in a recent case of an action of assumpsit in B. R., the court held that a grant for life, *by deed*, of the stewardship of a manor, and of the courts thereto belonging, was good. C. J. Abbott, in delivering the judgment of the court, adverted to the case mentioned by Lit. sec. 378, of a grant by deed, by a subject, of the office of a parkership for the life of the grantee, and to Lord Coke's commentary upon that sect. (1 Inst. 233 b), where he states that 'if a man doth grant to another the office of the stewardship of his courts of his manors, with a certain fee, the grantor cannot discharge him of his service and attendance, because he hath the profits and fees belonging to his office, which he should lose if he were discharged of his office.' The Court also adverted to the case of *Hurrey v. Newlyn*, which was an action on the case for disturbing the plaintiff in the office of bailiff

of a manor, granted to him for life, and observed, that the decision against the plaintiff in that case appeared to have been, because it was not alleged by him that there was any profit belonging to the office.

"The appointment of a steward is generally, however, during the lord's pleasure only, and even when made for years, or for life, the office may be forfeited by mis-user, non-user, or refuser: but in a stewardship for life the appointment would not be revoked by a subsequent sale, and of course therefore not by a devise of the manor, and this because of the casual profits incident to the office, which could not be determined but with the existence of the manor.

"Should the steward be disturbed in his office his remedy is by an action on the case; which has been substituted for an assise; and it was laid down in *Webb's* case, that an assise lies for the office of steward, bailiff, or receiver of a manor. It also appears that the court of King's Bench would grant a *mandamus* to restore a person to the office of steward of a customary court baron.

"It has been thought, that the office of steward is absolutely essential, but I have not been able to find any authority denying the lord of a manor the privilege of holding his own court; on the contrary it is laid down in various books, that the lord, or his steward, is the judge in the customary court, which seems fully to establish the right of the lord to preside in person, if he pleases. It may however admit of a question whether, in such a case, the same remedy would be open to the lord for fees upon surrenders, and admittances, &c., as the law affords to stewards in ordinary cases, unless by special custom or convention.

## SELECTIONS FROM CORRESPONDENCE

No. LXXXIX.

### ACKNOWLEDGMENT OF LEASE FOR A YEAR.

Sir,

I venture to make some remarks upon this important subject; and am the more inclined to do so, [as your correspondent J. A. M. (p. 125), does not allude to the 79th sec. of 3 & 4 W. 4, c. 74, on which another of your correspondents S. W. lays so much stress.

This section enacts "that every deed to be executed by a married woman for any of the purposes of this act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall upon her executing the same, or afterwards, be produced and acknowledged by her, as her act and deed before a judge, &c. Now I contend, that even if a lease for a year is executed by the wife, it is not executed by her for any of the purposes of the act: 1st, Because such execution, though

by her, is merely nugatory either with or without acknowledgment: and 2dly, Because another well-known purpose is thereby answered by her husband's execution alone. The freehold, or the right of possession of all the wife's lands of inheritance, vest in the husband immediately upon the marriage, and his conveyance alone is sufficient to transfer a good estate during their joint lives. He alone could make a good tenant to the præcipe and a release to him and his heirs, where his wife was only tenant for life, is good, for there is both privity and an estate in the husband, whereupon the release may sufficiently enure by way of enlargement. It is true that husband and wife are said to be seised in fee in right of the wife; but this description of their estate arises from the unity of persons, and does not interfere with the separate freehold interest which he acquires by the intermarriage. Let us now turn to the 77th sec. of the abovementioned act. It empowers the wife by deed to dispose of, release, surrender, or extinguish, *any estate which she alone, or she and her husband in her right,* may have in any lands, as fully and effectually as she could do, if she were a feme sole, save and except that no such disposition, release, surrender, or extinguishment should be valid and effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as thereafter mentioned. We see then that the wife has now the power of conveying her interest by the ordinary modes of conveyance, which she would use as a feme sole; but it may be asked, do the above words in italics, (shewing the estate over which the wife is to have such power,) interfere with, and include that separate freehold interest of the husband during their joint lives, and put the wife in the same situation as if she had no husband? I think not: because if such was the meaning, the words would have been as follows: "Any estate which she alone, or she and her husband in her right, or the husband alone by virtue of the intermarriage:" upon this point, in my opinion, the case mainly depends; because, it will be said, that if the power extends to such separate estate of the husband, the wife being then in almost every respect a feme sole, must use the ordinary modes of assurance; and if she executed the lease for a year, the same must be acknowledged by her, as being executed by her, for the purposes of the act. We will therefore consider this point further: It will be observed, that the legislature has in the 77th sec. defined a sole estate in reference to the wife; and it follows, that having made such a distinction, the description of the estate of the husband and wife immediately following, must mean, not the sole estate of the husband and the joint estate of himself and wife, but the joint estate alone, the words themselves import such, and cannot be extended further; besides, it cannot be supposed that the legislature intended to make the wife the party to transfer by the ordinary modes of conveyance of a feme sole, a freehold interest actually vested in and belonging exclusively to the husband; the act

was not made for such a purpose; it would only apply to interests for the conveyance whereof a fine and recovery was necessary: If it had been intended that the wife should have a power or authority simply as such, the words "as fully and effectually as she could do if she were a feme sole," need not have been added. At all events whether she has power as such, or not, she has evidently an interest to convey, and therefore, it would be held by executing a release, she had recourse to the conveyance of her interest, which could not include an estate in which she had in fact no interest; viz. that of the husband. The reasonable construction seems to be, that the act only gives the wife the power of a feme sole to the extent of her own interest and of the joint interest of herself and husband, subject of course to his freehold during their joint lives; if so, the release alone, duly acknowledged, and in which her husband concurs, is sufficient to dispose of the estate under the above statute, notwithstanding she has executed, but omitted to acknowledge, the lease for a year; because such lease is not made for any of the purposes of the act, being as regards the wife, executed by her to no purpose, as she can convey no estate in possession, which is always the object of a lease for a year, such estate in possession being in the husband alone. But it may be asked, why did she execute it? The answer may be, if for any purpose, probably for that of providing for the possibility of her being a feme sole, though represented as a married woman. It cannot be said, a wife never executed a lease for a year, previously to the new statute, and yet such execution was then merely nugatory. But grant that the lease, as regards the wife, is void for want of acknowledgment, the act does not make it void with reference also to the husband, it only points to the case of a deed being executed by the wife, by which her disposition shall be effected under the powers thereof; therefore, the purchaser has, by the act of the husband, a sufficient estate for the release of himself and wife to work upon. The Court would decide thus: "*ut res magis valet quam pereat.*" E. P.

The remarks upon the subject of Acknowledgments of Leases for a Year, 8 L. O. 236. 314, 434; 9 L. O. 56, 125, were raised and answered in the first instance, by your correspondent J. H. E., who seems to have had a clear view upon the subject. I think the subject has been somewhat mystified by the late writers; I shall therefore endeavour, by reference to principle and cases, to shew, that J. H. E. was right in holding, that no acknowledgment was requisite of the lease by the wife. The real question seems to have been lost sight of, viz. whether an innocent conveyance, by the husband, of the wife's land, is *void*, or only *voidable*. If the first, then those who stand up for the acknowledgment by the wife are right; if voidable only, then is J. H. E. right in his position. That the husband has an interest in the wife's

lands, is shown by the case of *Polyblank v. Hawkins*, Doug. 329, which proves that the right way of pleading their interests is, that the husband and wife are, in her right, *seised in fee*. That the husband may make a lease of the wife's land, and if he reserve a rent, and she after his death receive such rent, she thereby affirms the lease, is admitted by the *M. R.*, in *Drybutter v. Bartholomew*, 2 P. W. 127. *Doe v. Weller*, 7 T. R. 478, is a direct authority, that where the husband (the wife was a party, and executed, but this could be of no avail without a fine), leased the wife's lands, and she after his death received the rent, this amounted to a confirmation, such lease being *voidable* only. It was scarcely necessary to add this, as confirmation cannot aid a *void* act. Again, on principle, seeing that the husband and wife are in her right said to be *seised* in fee of her lands, and as before 32 H. 8, c. 28, s. 6, the same tortious conveyance by a husband of his wife's land, was a discontinuance to her, as was a discontinuance of entail lands, when made by tenant in tail; it seems to follow, that an innocent conveyance of the wife's fee simple lands by the husband, must have the same effect as a similar conveyance of entail lands, by tenant in tail, since the inheritance of the conveying party in each case ascertains the extent of the assurance. That the innocent conveyance of tenant in tail, passes a *voidable* fee, is seen from *Machel v. Clarke*, 2 Salk. 619; and therefore, I conclude, the innocent conveyance of the husband *seised, jure uxoris*, creates only a *voidable* act; and hence a lease by husband alone, of his wife's land, is clearly *voidable* only, *Jordan v. Wikes*, Cro. Jac. 332. It comes then to this, if the wife, in pursuance of the powers of the Fines and Recoveries' Abolition Act, confirm the act of her husband, till then voidable, by joining in the release, she cannot dissent after his death. Before the act, she might have assented by fine, and now the act only simplifies that mode of shewing such assent; should any further references be wanting, to confirm the doctrine of the husband's power over the wife's lands, I can only refer the parties to 4 Bacon's Abridgment, (ed. 1797), title, C. Leases made by Husband and Wife; and also 2 Bacon's Abridgment, title Discontinuance, (Head C.) by husbands *seised* in right of their wives. T. O. B.

[We submit to our several correspondents on this matter, that enough on both sides has been stated, answered, and replied to, and that they should now select another subject for disquisition. Ed.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### CONTEMPT.—JURISDICTION.

*A prisoner committed for contempt of an order to transfer stock, not in existence when the order was made, is not within the provisions of the 1 W. 4, c. 36; but the*

*provisions of that act are extended to his case by the 2 W. 4, c. 58, which gives the Court a discretionary jurisdiction.*

Mr. *Wood* applied for an order to discharge the defendant from prison. He was ordered, by a decree made in the suit, to transfer some stock which had stood in his name, and to pay over the dividends he had received; but the stock having been sold out, it was impossible to comply with the order, and the defendant was committed for the contempt. He had filed his petition in the Insolvent Debtors' Court, inserting in his schedule the amount of stock that had once stood in his name, and prayed to be discharged by that Court, according to the power given it by the 7 G. 4, c. 57; but that Court refused to discharge him until this Court had first discharged him from the contempt. This application had been made to the Vice Chancellor; but his Honor refused it, conceiving that the Court had not jurisdiction in a case of contempt for not transferring stock, there being no express provision for it in the act 1 W. 4, c. 36. Mr. *Wood*, however, submitted, that by the 15th section of that act, and rule 17, this Court, "in any case of commitment for contempt not before provided for, may make such order for the discharge of a prisoner upon such terms as the Court may see fit."

Mr. *J. Russell*.—This defendant is not entitled to any favor. Being a trustee of this stock, he had vexatiously defended the suit. After selling out the stock, he asked the Court to discharge him from the effect of the decree made against him. This case did not fall within the 1 W. 4, c. 36. This Court is not ancillary to the Insolvent Debtors' Court; let him apply to that Court for his discharge from the debt, then he may come here to claim his discharge from the contempt. To discharge the defendant in this way, would be a great hardship on the plaintiffs.

The Lord Chancellor.—No greater hardship than in all cases of insolvency, except that the discharge here might be an extinction of the debt. Why not accept the proposition of allowing this stock to be inserted in the schedule as money, and thus make the defendant's future effects liable?

Mr. *Russell* relied upon the objection that the act referred to gave the Court no jurisdiction over this case.

Mr. *Wood*.—This case, if not within the letter of the act, is within its principle, and amounts to the grievance which was the occasion of the act; that was, the power a vindictive party had of keeping another in prison during his pleasure.

The Lord Chancellor.—The effect of the section of the act referred to is this, that if a party will not, through obstinacy or other cause, do the act commanded, the Court will do it for him, so that the other party may have the benefit of the act, as if the person ordered did it; but can that be done in this case? His Lordship was inclined to think he had not jurisdiction; but he would consider it, and confer with the other Judges on it.

Mr. Wood, some days after, referred his Lordship to the act 2 & 3 W. 4, c. 58, extending and explaining the provisions of the act 1 W. 4, c. 36, and enacting that in all cases of contempt other than those provided for by the last-mentioned act, before any person shall at any time be in prison under any commitment or attachment directed by the Court of Chancery or Exchequer, the Court of Equity directing such commitment or attachment shall have the power, *if it so think fit*, to discharge such person from his contempt, except as to the costs thereof, which shall be deemed to be within the Insolvent Debtors' Act (7 G. 4, c. 57). He was not aware of this act when he first made the application.

The Lord Chancellor having looked into this act, said, it seemed to him to be framed to meet this case, which certainly was not within the former act. It is in the discretion of the Court to discharge him from the contempt, and then he may apply to the Insolvent Debtors' Court for his discharge from the costs. This Court, however, must have before it sufficient evidence of the fitness of this prisoner's case for the exercise of its discretion in his favor, and he would, with that view, look into the affidavits.

His Lordship afterwards said, he had read the affidavits, and thought he might direct the defendant to be discharged from the contempt, but not from the costs. He may apply to the Insolvent Debtors' Court to be discharged from them.

*Hughes v. Lloyd*, Sittings at Lincoln's Inn, December 10th & 18th, 1834.

#### PRACTICE OF SOLICITORS.

*It is not necessary for the agents or solicitors for all the parties in a suit, to attend the registrar in passing a decree. It is for him who gets the decree in his favor, to see it drawn up, and both agents in decrees requiring nicely attend to assist the registrar in drawing up the minutes.*

Mr. Cooper stated the contents of a petition in which a question was raised for the decision of the Court, that interested all the solicitors practising in it. In the suit of *Long v. Long*, an infant, Anne Isabella Long was made a ward of the Court, taking an interest in two sums of 2500*l.*, each. A petition was presented in her name, in August 1833, by Mr. Robert Long, her paternal grandfather, praying for the appointment of a guardian of the infant. Her mother, then married to a second husband, (Mr. Sandes), being her next of kin, had a right to appear on that petition, and she accordingly gave instructions to Mr. Young, her solicitor then, to appear for her. Mrs. Sandes afterwards discharged Mr. Young, and instructed Mr. Gregory, who continued her solicitor in this matter down to the 23d of June, in the present year. On that day the late Lord Chancellor pronounced an order appointing Dr. Cooper, of Worcestershire guardian of the infant; Mrs. Sandes being dissatis-

fied with Mr. Gregory, discharged him also, and appointed in his place Messrs. Constable and Kirk, who continue her solicitors. They attended the registrar together with Messrs. Croft and Whiteside, the solicitors of Mr. K. Long, on the 28th of June, and obtained a copy of the minutes of the order of the 23d. Several steps were afterwards taken by them to alter the minutes, and a new notice was given by them on the 28th of October, of a motion in the then approaching term, to vary the minutes; but on the suggestion of the Lord Chancellor a petition was presented, stating all the facts, and also a cross petition in behalf of Mr. Robert Long, praying, that Mrs. Sandes be restrained from seeing the infant. Those petitions came on for hearing on the 13th of November, when the Lord Chancellor dismissed the latter, and ordered the minutes of the order of the 23rd of June, to be drawn up into a decree. Messrs. Croft and Whiteside attended the registrar on the 28th of November, to enter and pass the order in the absence of Messrs. Constable and Kirk, who, as the solicitors of Mrs. Sandes, on behalf of the infant, had a right to be present. The prayer, therefore, of the present petition was, that the order be stayed for this irregularity, and that Messrs. Croft and Whiteside be ordered to pay the costs of this petition. The learned counsel said, it was the uniform practice for the solicitors or agents on both sides to attend the registrar, in drawing up the minutes; Messrs. Croft and Whiteside were well aware of that practice, as was proved by the fact, that they gave notice to Mr. Gregory, and he it was who attended the registrar, although he was not the agent of Mrs. Sandes since the 23rd of June. That they knew Messrs. Constable and Kirk to be the solicitors substituted for Mr. Gregory, was evidenced, not only by the facts stated in the petition, but also by this, that they were the solicitors who were served by Messrs. Croft and Whiteside with a warrant to tax the costs.

Mr. Munroe and Mr. Girdlestone, on behalf of the guardian and the solicitors, submitted that there was no irregularity in what was done. Mr. Gregory was the solicitor when the order was pronounced, and he best knew how the order was to be drawn up to correspond with the minutes. Mrs. Sandes was no party to that order, although she appeared by counsel. It was made on the petition of the infant, presented by the grandfather; there was nothing in the order to affect the interest of Mrs. Sandes.

The Lord Chancellor.—There is no allegation in the petition, that the order, as drawn up, is not conformable to the minutes. The petition does complain that the order is injurious to Mrs. Sandes; but that was the matter of complaint to the late Lord Chancellor, who so far from yielding to such complaint, confirmed his order, and directed it to be drawn up. The last order of Lord Brougham, dated the 10th of November, directing the order to be passed, disposed of this matter. The order as passed, agrees with the minutes; the registrar also says, that it is not necessary that both the agents should attend the registrar. He who

has got the decree in favor of his client, always takes care to secure the benefit of it: he sees it entered and passed. Where there is difficulty both agents attend to assist the registrar. The petition is dismissed, with costs against Mrs. Sandes.

In *re Long*, in the cause *Long v. Long*, sittings at Lincoln's Inn, after Michaelmas Term, 1834.

### King's Bench.

[Before the Four Judges.]

#### ATTORNEY AND CLIENT.—RETAINER.—EVIDENCE.

*The mere production of an attorney's retainer in a particular cause, is not conclusive that the person giving it is liable for the costs incurred.*

This was an application to set aside a verdict found for the defendant, on the ground of misdirection on the part of the learned Judge who tried the cause. It was an action for an attorney's bill. The defendant first pleaded the general issue; and secondly, the statute of limitations. On the part of the plaintiff it was shewn, that a written retainer had been given to him in the cause in question, and for the costs incurred, in which the present action was brought, and that retainer was produced. On the part of the defendant, several witnesses were called for the purpose of shewing, that although the retainer had been given by the defendant, yet the proceedings had been carried on at the instance, and on the credit of another person, and consequently, that the defendant was not liable. The learned Judge in summing up to the jury, left it for them to consider, whether the plaintiff had given credit to the defendant, or to the person to whom it was suggested that credit had been given. This direction, it was contended, was wrong, for no question ought to have been raised with respect to who the person was to whom credit had been given, after the retainer had been put in evidence.

*Per Curiam.*—The mere putting in evidence of the retainer by the defendant, does not necessarily conclude the defendant as to whom the credit was given. Although he may have originally given the retainer, the credit may have been given to another person. The direction, therefore, of the learned Judge was perfectly correct, and consequently there is no ground for disturbing the verdict found by the jury.

Rule refused.—*Godson v. Freeman*, M. T. 1834. K. B. F. J.

#### UNDER-SHERIFF'S NOTES.—WRIT OF TRIAL.—CONTEMPT.

*When a writ of trial has been executed, and the under-sheriff's notes are required by the superior Court, in order to dispose of a rule for a new trial, the notes must be read forthwith on an intimation from the Court.*

This was an issue tried before an under-

sheriff, under the 3 & 4 W. 4; c. 42, § 17. On a motion for a new trial in this cause, the Court required the under-sheriff's notes. The plaintiff applied, through his agent, to the under-sheriff for his notes, but he refused to give them until he received an order from the Court to that effect. Such order having been procured, the under-sheriff delivered his notes, but not till the plaintiff had been put to additional expenses in consequence of his (the under-sheriff) withholding them in the first instance. A rule *nisi* was obtained, calling on the under-sheriff to shew cause why these expenses should not be paid by him.

On shewing cause against this rule, it appeared from the affidavits on the part of the undersheriff, that the person applying for the notes, and who represented himself as the plaintiff's agent, the under-sheriff believed to be unfriendly to one of the parties, and unauthorized to make the application. He had therefore refused to give his notes until he received an order from the Court to that effect. On receipt of such order he immediately furnished them.

*Per Curiam.*—We do not think the sheriff sufficiently blameable to authorize us in compelling him to pay these costs. He did not know, when the first demand was made, that the Court desired the production of his notes; and he also believed the person applying for them to be inimical to one of the parties. Therefore, upon the whole, we think he was not to blame. The present rule must be discharged, without costs.

Rule discharged, without costs.—*Metcalf v. Parry*, M. T. 1834. K. B. F. J.

### King's Bench Practice Court.

#### BAIL.—GIVING TIME.—DISCHARGE OF BAIL.—BAIL-BOND.

*If one of two bail consents to time for putting in bail being given to the defendant, they are not, by such time, entitled to have the bail-bond cancelled.*

In this case a rule *nisi* had been obtained, calling on the plaintiff to shew cause why the proceedings in this cause should not be set aside, and the bail-bond be delivered up to be cancelled. The ground of the application was, that the plaintiff having given the defendant time to put in bail, without the consent of the bail below, they had by that act become freed from all liability, and were entitled to have the bail-bond delivered up to be cancelled.

On shewing cause against this rule, affidavits were produced which swore that time had been given with the bail's consent.

In support of the rule it was submitted, that it did not sufficiently appear from the plaintiff's affidavits that both the bail had consented.

*Littledale, J.*—On reading the affidavits, I am inclined to think that time was given with the approbation of one of the bail; and in matters of this sort the acts of one are binding to the other.

Rule discharged.—*Howard v. Bradberry*, M. T. 1834. K. B. P. C.

IRREGULARITY.—INDORSEMENT OF DEBT AND COSTS.—CAPIAS.

*If in the indorsement of debt and costs claimed by the plaintiff by his writ of capias, the word "execution" is introduced, instead of "service," it may be amended on certain terms.*

This was an application for a rule nisi for cancelling the bail-bond in this case, on the ground of the indorsement of the amount of debt and costs on the back of the writ not being in accordance with the form attached to the rule of court, and consequently irregular. The indorsement given in the form was, that if the amount claimed, together with costs, were paid within four days from "the service" of the process, proceedings would be stayed. The word "service," however, it was contended, should apply only to serviceable process, and not to bailable process, where the word "execution" should be used.

*Littledale, J.*, was of opinion that the word service was properly used, the form given in the rule having been strictly followed.

Rule refused.—*Colls and others v. Morpeth*, M. T. 1834. K. B. P. C.

DISTRINGAS.—ENTERING APPEARANCE.—  
HEARSAY EVIDENCE.

*When the sheriff has returned non est inventus and nulla bona to a writ of distringas, primary evidence must be given of the efforts made to effect a service.*

In this case a *distringas* had been obtained, the sheriff's return to which was *non est inventus* and *nulla bona*. It appeared that the sheriff's officer to whom the execution of the writ was intrusted had since died, but before he died he had told another person of the efforts he had made to serve the defendant. The person to whom this communication was made stated, in an affidavit, those efforts. An application was now made, under the 2 & 3 W. 4, c. 39, § 3, for leave to enter an appearance for the defendant.

*Littledale, J.*, said, that it must be more clearly shewn what efforts had been made to serve the *distringas*, in order that he might judge of the propriety of allowing an appearance to be entered for the defendant; but he could not rely on hearsay of what a particular person had done.

*Daniels v. Varity*, M. T. 1834. K. B. P. C.

LOST NOTE.—RULE TO COMPUTE.—SECONDARY EVIDENCE.

*Where a promissory note on which judgment has been signed has been destroyed, a rule to compute may notwithstanding be obtained.*

This was an application for a rule nisi, to compute principal and interest on a promis-

sory note. An affidavit was produced wherein the deponent swore he saw the defendant tear the note to pieces.

*Littledale, J.*, granted a rule nisi.

Rule nisi granted.—*Clarke v. Quince*, M. T. 1834. K. B. P. C.

NONPAYMENT OF COSTS.—ATTACHMENT.—  
CONDITIONAL ORDER.

*If a Judge's order is conditional for payment of costs, an attachment for its non-performance cannot be obtained, although the condition has not been fulfilled.*

In this case an application was made to the Court for a rule nisi for an attachment against the plaintiff for non-payment of costs pursuant to a Judge's order. The *capias* sued out by the plaintiff in this case was irregular, the word "execution" being introduced, instead of "service." The plaintiff then applied for and obtained the order of a Judge to amend, on payment of costs. The plaintiff amended, but had not paid the costs, although he was proceeding with his action.

*Littledale, J.*, said, the proper course for the defendant to pursue in this case, would be for him to make an application to rescind the order, and by so doing, the plaintiff's proceedings would be regular; but he refused to direct an attachment for the non-performance of a conditional order.

Rule refused.—*Turner v. Gill*, M. T. 1834. K. B. P. C.

ATTORNEY.—STRIKING OFF THE ROLL.—  
ATTACHMENT.

*Where an attorney disobeys a Judge's order, the proper course of proceeding against him is by applying for an attachment, and not to strike him off the roll.*

This was an application for a rule nisi to strike an attorney off the roll, for disobeying a Judge's order. The order directed him to assign his articulated clerk, and to pay the costs of the application. This order was afterwards made a rule of court, but it was disregarded by the attorney.

*Littledale, J.*—The proper course to pursue in this case will be to obtain an attachment. If he still remains in contempt, then the question as to his continuing on the roll may be discussed.

Rule nisi accordingly.—*Ex parte Townley*, M. T. 1834. K. B. P. C.

CAPIAS.—AFFIDAVITS.—JURAT.—AFFIDAVIT  
OF DEBT.

*Affidavits of debt sworn before commissioners, need not be entitled in any Court.*

A rule nisi was obtained in this case to set aside the writ of *capias*, and all subsequent proceedings, with costs, on the ground of several defects in the affidavit of debt, and the ca-



*pias*. The objections to the writ and affidavit were three, and in the following order: first, the affidavit of debt, it not being intitled in any Court; secondly, the jurat, which stated it to be sworn at Edinburgh, but did not state the county in which that city was; thirdly, the writ contained no description of the defendant's residence.

On shewing cause against this rule, it was contended, that the affidavit of debt had been held sufficient by a judge at chambers; and with respect to the writ, the defendant could not object to it, he having waived his right, by obtaining time to put in bail. The other objections to the writ and affidavit had been discussed before the judge at chambers, and by him also held sufficient.

*Littledale, J.* Affidavits sworn before commissioners, are not required to be entitled in any Court. As to the other objections, I do not see how I can interfere with them, they having been finally decided by Mr. Baron Alderson at chambers, before whom this case came. The present rule therefore must be discharged, allowing the plaintiff time to amend the indorsement, on the conditions before mentioned.

Rule discharged, without costs.—*Urquhart v. Dick*, M. T. 1834. K. B. P. C.

#### ENTITLING AFFIDAVIT.—AMENDMENT.—ASSIGNEE.—PERJURY.

*If an affidavit is proposed to be entitled in a cause in which an assignee is plaintiff, it must be shewn in the title, of whom the plaintiff is assignee.*

In this case a rule *nisi* was obtained, calling upon the plaintiff to shew cause why the judgment signed by him should not be set aside with costs, and why he should not stay his proceedings.

On shewing cause against this rule, the entitling of the affidavit on which the rule was obtained, was objected to. It described the plaintiff as "Phillips' assignee," &c.; this, it was contended, was too general a description of the plaintiff, as it did not appear from the affidavit, whether he was assignee of a bankrupt, or, in fact, what assignee he was. If such an affidavit as this were permitted, an indictment for perjury would not lie against the deponent.

In support of this rule it was submitted, that the name of the cause really was "*Phillips v. Hutchinson and others*," and that the words "assignee, &c.," were superfluous. That being the case, an indictment for perjury could be supported. In the event, however, of the affidavit being wrongly intitled, the Court would permit the plaintiff to amend.

*Littledale, J.*, was of opinion, that it was no more than proper it should be shewn whether the plaintiff was assignee to a person to whom he might legally be an assignee. He could neither allow an amendment, nor enlarge the rule; but it being a mere technical error, he should discharge the rule without costs.

Rule discharged without costs.—*Phillips' assignee, &c. v. Hutchinson & others*, M. T. 1834. K. B. P. C.

#### BAIL.—DESCRIPTION OF RESIDENCE AND PROPERTY.

*What is a sufficient description of bail, his residence and property.*

Bail in this case justified by affidavit. The affidavit and notice were objected to on five grounds; the first objection to the affidavit, was, that the bail's affidavit stated, that "he's possessed," instead of "he is possessed." The second objection was to the bail's description in the notice, which was as of "*Trevala*." It stated the parish and county, but no street or place was named, as was directed by the rule of Court. The third objection was, that the affidavit, instead of stating the bail to be worth the proper sum, "over and above his just debts," stated "over and above what will pay his just debts." Fourthly, that the bail swore to "good debts," instead of "good book debts." Fifthly, that "yeoman," was an insufficient description of the bail.

*Littledale, J.*, overruled all the objections, and allowed the bail to pass.

Bail passed.—*Lanyon's Bail*, M. T. 1834. K. B. P. C.

#### CERTIORARI.—PROCEDENDO.—WILFUL DELAY.

*A defendant being entitled to a certiorari as a matter of right, a procedendo will not be allowed to issue, unless it is shewn, that the former writ was issued for the purpose of delay.*

A writ of *certiorari* was issued in this cause, on the day which was appointed for the trial of the cause. An application was now made for a rule *nisi*, to quash that writ and issue a *procedendo*, on the ground of the *certiorari* having issued for the purpose of delay and inconvenience. It appeared from the affidavits on which this application was founded, that the additional expense would be very great to the parties, if this cause were tried in a superior jurisdiction.

On shewing cause against this rule, it was contended, that the defendant was entitled, as a matter of right, to the *certiorari*. It was not shewn by the other side, that any irregularity had occurred in the defendant's proceedings.

*Littledale, J.*, was of opinion, that under the circumstances, it could not be said that the writ of *certiorari* was issued for the purpose of delay; nor that the process of the Court had in any way been abused. Such being the conclusion, he said he must discharge this rule, but without costs.

Rule discharged, without costs.—*Landens v. Sheil*, M. T. 1834. K. B. P. C.

**TIME FOR PLEADING.—VACATION.—UNIFORMITY OF PROCESS ACT.**

*If time for pleading is obtained before the 10th of August, but which does not expire previous to that day, the vacation is not taken into calculation.*

A rule nisi had in this case been obtained for the purpose of setting aside an interlocutory judgment. It appeared that on the 22d of July the plaintiff declared, and his declaration was indorsed to plead in four days. The defendant obtained an order, on the 24th, for a fortnight's time to plead. That period, however, elapsed without his pleading; and on the 7th of August, the plaintiff consented to the defendant's having a month's further time to plead. Judgment was signed by the plaintiff as for want of a plea, on the 1st of November, and the present rule was obtained for setting it aside, on the ground of its having been signed too early.

On the part of the defendant, it was submitted, that he was entitled to as many days to plead out of the month's time granted after the 24th of October, as remained unexpired on the 10th of August. The judgment, therefore, had been signed seventeen days too soon.

On shewing cause against this rule, it was contended, that the plaintiff, had signed his judgment in proper time, and that 12 Reg. Gen. M. T. 3 W. 4, applied only to cases where, according to the practice of the Court, the time for pleading had expired, and not where the time had been enlarged by consent. The month given by consent to the plaintiff ought to be considered as having elapsed in the vacation after the 10th of August.

*Littledale, J.*—I am of opinion that the defendant was, after the 24th of October, entitled to the same number of days to plead as remained unexpired on the 10th of August. This rule must therefore be made absolute, but without costs.

Rule absolute, without costs.—*Trinder v. Smedley*, M. T. 1834. K. B. P. C.

## ANSWERS TO QUERIES.

### Property and Conveyancing.

**DEVISE EXECUTORY OR CONTINGENT. P. 80.**

*Mary takes an estate for her own life only; and her eldest child, living at the time of her death, will take an estate in remainder by purchase, being the person expressly mentioned to take under the devise, whether he or she be the heir of Mary or not; see explanation of rule in *Shelly's* case by Preston: the remainder will, therefore, not coalesce with Mary's life estate, so as to enlarge it into a fee. Mary has, by levying a fine, forfeited her life estate, and the remainderman or reversioner, is entitled to enter. Com. Dig. tit. Forfeiture; Co. Litt. 251 b. The limitation to the eldest child is a*

contingent remainder, and not an executory devise. *Fearne*, Con. Rem. 6th ed. p. 385 *et seq.* But by the words of the will, it is not to take effect until the death of *Mary*, and the person who is to take under it, cannot be ascertained until her death. The remainder, therefore, could not vest during the continuance of *Mary's* particular estate, or *eo instanti*, that it was determined by the forfeiture, and consequently is utterly destroyed. *Fearne* Con. Rem. p. 4. The heir at law of the testator, is now the only person entitled; and as he comes in in the post, he may avoid the fine by entry within five years from its being levied, and then recover the possession by ejectment. If more than five years have elapsed since the fine was levied, the estate of the devisee is indefeasible. J.

### Law of Landlord and Tenant.

**LEGATEE'S PRESUMED DEATH. P. 63.**

The death of *B.* might probably be presumed in this case; but "*Studens*" should have further inquired, whether the fact of his death, without having married, and without leaving issue, might also be presumed. The facts stated do not authorize the last presumption; there is no statement of *B.'s* age when he went to America, and the circumstance of his being unmarried in 1810 (being only two years after he entered the navy), is a matter of little importance, unless he was then at an advanced age; the advertisements do not allude to the wife and children (if any) of *B.* On the whole, there is nothing shewn in the statement, to raise a reasonable presumption that *B.* died unmarried and without issue. Consequently, a Court of Equity would not direct a transfer of the stock or dividends, to persons who would be *B.'s* representatives in the event of his death without being married, and without leaving issue. E. P.

**ACKNOWLEDGMENT IN LIEU OF FINE. P. 64.**

In this case, an acknowledgment is necessary under the 3 & 4 W. 4, c. 74. "*Studens*" is wrong in supposing that the husband becomes absolutely entitled to the mortgage-money. It would have been more proper to have said, that the husband can with the concurrence of his wife, make himself absolute owner thereof; so that the wife is not a bare trustee. In *Boper, Hus. and Wife*, vol. 1, p. 224, it is said,—"But money of the wife, secured upon a mortgage in fee is not equally in the husband's power as money secured by a term of years; so that the decisions of the two are different, for a mortgage in fee a husband cannot dispose of at law. The estate, therefore, continuing in the wife, carries to her surviving the money belonging to it. The security then, not being assignable without her concurrence, the debt classes amongst her choses in action." And again, in p. 226, "the payment of mortgage-money cannot be compelled without a reconveyance of the legal estate to the mortgagee, and as this cannot take place without the wife's

concurrence, the husband has not the same power over property of this description, as he has over the other legal choses in action of his wife.  
E. P.

TITLE.—CONDITIONS OF SALE. P. 64.

A twenty-two years title, is not a marketable title; that is, one that a purchaser may be compelled to take, notwithstanding the new Limitation Act; for there may be persons under disability, or a remainder-man, who may be entitled to enter, after the determination of an estate for life, which may have been treated as an estate in fee. What length of title, is a moot point—not less, it seems, than 40 years. In the conditions of sale, there should be a special clause to this effect: "That the purchaser shall be content with an abstract of title, commencing with the deed of 1812, and shall not require, or be entitled to call for the production of evidence relating to the title, prior to that date. And further, that he shall not be allowed to vacate the sale, or take objections to the title either in consequence of the vendor's not producing evidence of such anterior title, or on account of any defect therein, (if any such there be)."  
E. P.

ADVERSE POSSESSION. P. 63.

The mere fact of non-payment of rent, or perception of rents or profits, without more, does not constitute an adverse possession, within the meaning of those statutes of limitation which were in force prior to the new limitation Act. There must be a disseisin, or ouster, or some other act than mere possession and perception of profits, to create adverse possession. Such a case as this is provided for in future by the new Limitation Act; but there is a saving clause where there has been a 20 years, *but no adverse possession* at the time of the passing of the Act, in which case, an action must be commenced in 5 years from the passing thereof.  
E. P.

ADVERSE POSSESSION. P. 63.

As *A.* let *B.* into lawful possession of the waste ground, as tenant from year to year, there was no adverse possession at the commencement; the rule of law is, that a possession rightfully begun, cannot be considered wrongful by being continued after the right of the party in possession has determined; the fact of a lease having been granted to another of the same premises, rather favors *A.*'s case, than otherwise; for during the continuance thereof, *A.* could not take possession. The same observations which were made as to non-payment of rent, in the last answer, apply here, though the cases differ in this respect,—in the one there was no rent paid, but in the other, rent was paid by the lessee to the owner of the freehold, a circumstance favorable to the latter. Under these circumstances, the possession of *B.* was not, during the continuance of the lease, adverse to *A.*'s title, and consequently *A.*, (if he has a good title in other respects, and *B.* cannot shew an adverse possession by other means),

can now recover in ejectment. *Doe v. Danvers*, 7 East, 299.  
E. P.

Practice.

INSOLVENT.—SOLICITOR'S COSTS. P. 63.

The trust-deed here stated, is void as a charge upon a benefice, 13 Eliz. 20. *Shaw v. Pritchard*, 10 B. & C. 241. Consequently the solicitor is not entitled to the whole or any portion of his debt, under the security thereof. A sequestration of the profits of the benefice may be obtained by the assignees under the insolvency, for the payment of the debts of the insolvent.  
E. P.

QUERIES.

Law of Property and Conveyancing.

STAMP DUTY.—LEASE FOR A YEAR.

Presuming it to be settled, that the stamp duty on the transfer of a mortgage, when a further sum is added, is only the *ad valorem* duty on such sum, without the deed stamp of 1*l.* 15*s.*; what stamp is required for the lease for a year, on transferring a mortgage in fee, when the further sum is less than 15*l.*, say 5*l.*, which sum, considered alone, would require 1*l.* on the release?  
J. A. M.

Common Law.

DISTRESS FOR TAXES.

By what act of Parliament, and the particular section thereof, are the goods of a succeeding tenant or occupier made liable for arrears of assessed taxes, due from a predecessor, in the same manner as they are liable to a landlord's distress for rent; if such be the law? Note, the distinction between land-tax and assessed taxes, the former being a charge on the land, and the latter on the person only.  
J. A. M.

THE EDITOR'S LETTER BOX.

A Correspondent in Italy, states he does not understand the comment added to his letter on the Serjeants (vol. 8, p. 447), and he enquires, what are the arrangements alluded to?—his letter applying to *future* Serjeants. Our answer is, that since the King's warrant of the 25th of April, (vol. 8, p. 15), it has been arranged by the *leading*, if not *all* the King's Counsel practising in the King's Bench, and other Courts, that they will not go to the Common Pleas except on special retainers; so that the serjeants still form a peculiar bar. Nevertheless, the suggestion of our Correspondent as to *future* serjeants, is a valuable one, and we hope will be attended to. We are for upholding the ancient institutions and dignities of the profession, and we think the King's sign manual to the document in question was somewhat hastily obtained.

We thank "A Subscriber," for the information for our *Legal Obituary*.

The Queries and Answers of T. B.; E. H.; II.; "Civis;" and T. T. T., have been received.

# The Legal Observer.

Vol. IX. SATURDAY, JANUARY 17, 1835. No. CCXLVIII.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LAWYERS IN THE NEW PARLIAMENT.

We are always happy to see our own profession well represented in the House of Commons. It is the only one of the learned professions the members of which find their way there; and we have watched with much interest the returns to the present Parliament. In our next number we shall probably be able to furnish a complete list of "Lawyers in Parliament." At present our information cannot be complete.

As we are perfectly unconnected with party ourselves, we are also always glad to see all parties in the state represented. We would not only have all parties heard, but heard by their best mouth-pieces; and we have equal enjoyment, as lawyers, at the success of all the ornaments of our profession, whatever may be their political creed.

We are pleased, therefore, to record the victories of many of the most eminent advocates of the day.

The Master of the Rolls has been returned for Malton. The Attorney General (Sir F. Pollock) has been returned, without opposition, for Huntingdon. The Solicitor General (Sir W. Follett) has succeeded, after a contest, at Exeter. The Attorney General's reputation in the House of Commons is already fixed: he will probably neither raise nor lower it. The Solicitor's is still to be earned, and we are inclined to augur favorably of his success.

The late Attorney General (Sir J. Campbell) will probably be returned for Edinburgh; and the late Solicitor General (Mr. Rolfe) has been returned for Falmouth and Penryn. They are both able men, and we shall be glad to see them in the House of Commons.

NO. CCXLVIII.

Mr. Pemberton has been returned for Ripon. When last in Parliament he obtained no mean reputation. To him we would oppose Mr. Serjeant Talfourd, returned for Reading, who, we think, bids fair for parliamentary honours. Mr. Serjeant Wilde, perhaps now the first advocate at the Bar, has succeeded at Newark. Mr. Serjeant Goulbourn, an able man and ready man, at Leicester. Mr. Tancred has been returned for Banbury; Mr. Horace Twiss for Bridport. Doctor Lushington represents the Tower Hamlets, and Dr. Nicholl, Cardiff. Mr. Pryme has come in for Cambridge Town; Mr. Roebuck for Bath; the Hon. Mr. Scarlett for Norwich, and Mr. Poulter for Shaftesbury; Mr. C. Buller for Liskeard; Mr. Kennedy at Tiverton; Mr. Jervis for Chester, and Mr. Aglionby for Cockermouth.

Fortune has not, however, favoured all our friends. Sir W. Horne has not succeeded in Mary-le-bone, nor Mr. Knight for Cambridge. Mr. Hill no longer represents Hull, nor Mr. Godson, Kidderminster. Mr. Serjeant Spankie was not re-elected for Finsbury, nor Mr. John Romilly for Ludlow, nor Mr. E. Romilly for Bridport. Mr. Brougham did not succeed in this election for Leeds, nor Mr. Philpotts for Gloucester, nor Mr. James Stewart for Barnstaple.

These gentlemen are all at the Bar. We are glad that the solicitors are also represented. Mr. Freshfield has succeeded at Falmouth and Penryn; Mr. Tooke at Truro; Mr. Wilks at Boston; and Mr. Harvey at Southwark. On the other hand, Mr. Faithfull has not succeeded at Brighton.

Besides these gentlemen, we must notice several others who have been recently connected with the profession, and for whom

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we cannot but feel some interest. Of these, Sir George Grey has succeeded at Devonport; Mr. Bonham Carter at Portsmouth; Mr. Ewart at Liverpool; Mr. Lennard at Ipswich; and Sir John Beckett at Leeds. Here we close our List for the present.

## CONSTRUCTION OF THE UNIFORMITY OF PROCESS ACT.

### No. IV.

#### DETAINER, &c.

IN the present article we shall consider the decisions pronounced by the Court on the writ of detainer, and the other branches of the act not heretofore noticed.

As to this writ, it has been decided, that the Court of Common Pleas may issue a writ of detainer, directed to the marshal of the King's Bench; (*Millard v. Millman*, 2 Dowl. Prac. Cas. 723;) and in *Barnett v. Harris*, (2 Dowl. Prac. Cas. 186; and 6 L. O. 236, S. C.) that the King's Bench may issue one to the warden of the Fleet. It was also decided in both those cases, that it is not necessary to bring up a prisoner by *habeas corpus* into Court, in order to charge him with a declaration. In *Stor v. Mount*, (2 Dowl. Prac. Cas. 417; 7 L. O. 301, S. C.) it was decided, that a writ of detainer directed "to the marshal of our prison of the Marshalsea," instead of "the marshal of the Marshalsea of our Court before us," was irregular, and therefore the defendant was discharged out of custody.

With respect to the writ of summons against members of Parliament, traders, it has been decided, that where a person having privilege of parliament, has been sued by bill and summons, before the Uniformity of Process Act passed, and after the commencement of the action he loses his privilege, the process should be continued by *distingas*, treating him as a member of parliament, in order to avoid the Statute of Limitations. (*Taylor v. Duncombe*, 2 Dowl. Prac. Cas. 401.)

Next, as to appearance; it has been determined, that the plaintiff may enter an appearance for the defendant, without any indorsement of the amount of debt and costs claimed by him, if the defendant improperly gets possession of the writ of summons, and the Court will compel the defendant to pay the costs. (*Brook v. Edridge*, 2 Dowl. Prac. Cas. 647.)

With regard to impleances, it was held

in the case of *Freen v. Chaplin*, (2 Dowl. Prac. Cas. 523,) that notwithstanding the Uniformity of Process Act, if the plaintiff declared in vacation, the defendant was entitled to an impleance until the following term. It has since, however, been determined, in *Nurse v. Geeting*, (3 Dowl. Prac. Cas. 167,) and *Wigley v. Tomlins*, (*Id.* 7) that in such a case, a defendant is not entitled to an impleance, and that the effect of the Uniformity of Process Act, was to abolish impleances altogether.

As to the vacation, as constituted by s. 11 of the Uniformity of Process Act, a defendant must justify, as well as put in bail in vacation, although he is arrested between the 10th of August and the 24th of October, (*The King v. Sheriff of Middlesex*, 2 Dowl. Prac. Cas. 286.)

With regard to the time for pleading in vacation, it has been decided, that the rule 12 Reg. Gen. M. T. 3 W. 4, applies not only to the original time for pleading, but to enlarged time; and therefore, if a defendant obtains an enlarged time for pleading previous to the 10th of August, but which does not expire on that day, he is entitled to the remainder of the enlarged time after the 24th of October, for the purpose of pleading, no matter how long that time may be. In the case of *Trinder v. Smedley*, (3 Dowl. Prac. Cas. 87,) the remainder of the enlarged time was twenty-five days; and the Court holding him to be entitled to that period to plead, a judgment signed before its expiration was set aside as irregular. See also *Wilson v. Bradstocke*, 2 Dowl. Prac. Cas. 416.

If a defendant deposits money in the hands of the sheriff, pursuant to the 43 G. 3, c. 46. s. 2, which is paid into Court, the defendant will not be allowed to take it out, unless he has put in bail according to the exigency of the *capias*, although such a deposit is not mentioned in the warning attached to that writ. If however, bail has been perfected, but not in due time, before the plaintiff takes the money out, he must make his election as to which security he will take. (*Geach v. Coppin*, 3 Dowl. Prac. Cas. 74.)

The sheriff is bound to pay the necessary fee for opening the treasury during vacation, in order to file his return, if an order to make the return under s. 15 of the Uniformity of Process Act has been made. (*The King v. The Sheriff of Surrey*, 3 Dowl. Prac. Cas. 82.) In the Court of King's Bench, a Judge's order for returning a writ cannot be made a rule of Court, and an at-

tachment for disobedience thereto obtained, on one motion. (*Stainland & another v. Ogle*, 3 Dowl. Prac. Cas. 99.) But in the Court of Exchequer it is different; and therefore, in that Court, one motion is sufficient to make a Judge's order to bring in the body, or to return a writ; a rule of Court; and for an attachment for disobedience to it. (*Howell v. Bulleel*, 1b.)

With respect to the limitation of actions, the Court will not allow process to be served at the house of an agent of the defendant, out of the jurisdiction, in order to save the Statute of Limitations; but the plaintiff must proceed according to the provisions of the 2 & 3 W. 4, c. 89, s. 10. (*Frith v. Lord Donegal*, 2 Dowl. Prac. Cas. 527.) An *alias copias* may be issued more than four months after the expiration of the first *copias*, without affecting the validity of the former writ; and the continuances between the first writ and the subsequent writ may, as formerly, be entered at any time, unless the writs are issued with a view to avoid the Statute of Limitations, in which case only, the directions contained in s. 10 of the Uniformity of Process Act need be complied with. (*Nicholson v. Leman*, 2 Dowl. Prac. Cas. 296.) A bill of Middlesex is a good continuance of a *latitat*, in order to save the Statute of Limitations. (*French v. Mawood*, 2 Dowl. Prac. Cas. 565.)

duties respectively, deducting from the said amount or value so to be repaid in money the discount or allowance of one pound ten shillings for every one hundred pounds, and at and after that rate for any greater or less sum than one hundred pounds of the said amount or value, but not including any fractional part of a penny.

3. Affidavits made on registering voters in Ireland exempted from stamp duty.

4. And reciting that by the 3 & 4 W. 4, c. 97, s. 18, whenever the commissioners of stamps should discontinue the use of any die or dies, and should provide any new die or dies to be used in lieu thereof, and should give public notice thereof by advertisement in the manner directed by the said last recited act, all persons who should have in their custody or possession any vellum, parchment, or paper stamped or marked with any die or dies in lieu of which any such new die or dies should have been provided, and which vellum, parchment, or paper should, by reason of the providing of such new die or dies, be rendered useless or inapplicable for the purposes for which the same was originally designed, might send the same to the head office for stamps at any time within three calendar months next after the day so fixed and appointed by such advertisement as aforesaid; and the said commissioners, or any officer of stamp duties duly authorised in that behalf, might cause the stamp or stamps upon such vellum, parchment, or paper to be cancelled, and such vellum, parchment, or paper, or (if the said commissioners or such officer should think fit) any other vellum, parchment, or paper, to be duly stamped or marked with such new die or dies in lieu of and to an equal amount with the stamp or stamps so cancelled: And that the said commissioners of stamps having discontinued the use of certain dies heretofore provided and used for denoting the stamp duties payable on bills of exchange, promissory notes, and receipts, and having provided other dies to be used in lieu thereof, had given notice thereof by advertisement in the manner directed by the said act, and that divers persons who have in their custody or possession stamped vellum, parchment, and paper rendered useless or inapplicable by reason of the providing of such new dies, have neglected to send the same to the said head office for stamps within the time limited for that purpose by the said act and by such advertisement as aforesaid, it is enacted, that the commissioners of stamps and taxes, or any officer duly authorized in that behalf, may exchange or restamp all such stamped vellum, parchment, and paper so rendered useless or inapplicable as aforesaid, or, in the discretion of the said commissioners, refund and repay the amount of the stamp duty thereon in the manner directed by the said last-recited act, provided application shall be made to them respectively for that purpose within the space of six calendar months next after the passing of this act. (13th Aug. 1834.)

[The last clause, for the allowance of spoiled stamps, is important to the profession. The time allowed will expire on the 13th of Feb.]

## ABSTRACTS OF RECENT STATUTES.

### AN ACT TO REPEAL THE STAMP DUTIES ON ALMANACKS, AND FOR THE ALLOWANCE OF SPOILED STAMPS.

4 & 5 W. 4, c. 57.

1. That from and after the passing of this act, (13th Aug. 1834), all stamp duties now payable in Great Britain and Ireland respectively for or upon any almanack or calendar, or any book or pamphlet serving the purpose of an almanack or calendar, shall respectively cease, save and except so much and such part and parts of the said duties respectively as have become due or payable, and now remain in arrear.

2. All persons having in their possession any stamps intended for almanacks or calendars, and which shall be rendered useless or unnecessary by the operation of this act, may send the same to the head office for stamps in Westminster, at any time within six calendar months next after the passing of this act; and the commissioners of stamps and taxes may cause the said stamps to be cancelled, and deliver out other stamps in lieu thereof, or at their discretion refund and repay the amount or value of the stamps so cancelled, out of any monies in the hands of the receiver general of stamp

DISSERTATIONS ON CONVEY-  
ANCING.  
No. XIX.

LIMITATIONS TO THE SEPARATE USE OF A  
WOMAN.

A very late case relating to limitations to the separate use of a married woman, which has caused some remarks in the profession, induces us to turn our attention to the subject. We have very lately examined the principal cases relating to clauses against anticipation,<sup>a</sup> and stated their result; and we shall now briefly enquire what words have been held to create a limitation to the separate use of a married woman.

In the case of *Elton v. Shephard*,<sup>b</sup> a sum of 2000*l.* was bequeathed to trustees, in trust to pay the produce to *M. E.*, wife of *A. W. E.*, for her sole and separate use, independent of her husband, with a power to *M. E.* to appoint the fund; and the Master of the Rolls was of opinion that the first words, "in trust to pay the produce to *M. E.* for her separate use," being unaccompanied by words limiting the duration of the trust, gave her the absolute interest; and that the subsequent words, giving her the power of appointment, were merely an anxious expression of the intention of the testatrix that she should have an uncontrollable power of disposing of the fund. This case was followed in two recent cases. In *Haign v. Swinney*,<sup>c</sup> where there was a bequest of stock to trustees, upon trust to pay the dividends from time to time to a married woman, for her separate use: this was held by Sir *J. Leach*, V. C., to be an unlimited gift of the dividends, and consequently to pass the principal; and that it made no difference whether the income were given to the legatee directly, or through the intervention of trustees. And in *Smith v. King*,<sup>d</sup> where it was declared by a marriage settlement that a trustee should lay out a sum of money, which the husband had agreed to settle, in the purchase of any public stocks or funds, or annuities for the life of the intended wife, in his own name in trust for her, and that he was, during her life, to pay her the dividends and other produce of the stock or annuity so to be purchased, to her separate use during her life, it was held by Lord *Gifford*, M. R., that the wife was en-

titled absolutely to a sum of stock purchased with the money, and not merely to a life interest in it.

And the intention must be quite clear to give the property to the wife for her separate use. Thus, a direction in a will to purchase an annuity, in the husband's name, of eighty pounds for the life of the wife of *D.*, will not exclude his legal right.<sup>e</sup> And where<sup>f</sup> there was a bequest of the residue of real and personal estate unto *L. J.*, to be placed at interest until twenty-one or marriage, and then the whole, with the accumulation, to be paid to her, to and for her use during her life, and after her decease unto the heirs of her body, lawfully begotten, equally to be divided between them, share and share alike; and for default of such issue, or in case of the death of *L. J.* before twenty-one or marriage, such residue to *J. C.* and his heirs for ever: this was held to pass only an estate for life to *L. J.* in the residue of the personal estate, and not to her separate use. So also, in the case of *Wills v. Sayers*,<sup>g</sup> where there was a bequest to a married woman of a sum for her sole and separate use and benefit, and afterwards a bequest of the residue for her own use and benefit, the Vice Chancellor (Sir *J. Leach*) held, that the residue was not the separate estate of the wife, observing that a gift to the wife for her separate use is no declaration of an intention to give the property to her separate use; and it is difficult to find any substantial distinction between a gift to a wife for her use, and a gift to a wife for her own use. And in the subsequent case of *Roberts v. Spicer*,<sup>h</sup> before the same learned Judge, where a legacy was bequeathed to a married woman, to and for her own use and benefit, it was held that this could not be considered as a gift to the separate use of the wife.<sup>i</sup>

To imply a trust for the separate use of a married woman, however, it is not necessary that the words "separate use" should be inserted in the limitation, if the words employed clearly convey the same meaning. Thus, where the words were, *that she should enjoy and receive the issues and profits of one moiety of the estate, &c.* This was held by Lord *Hardwicke*<sup>k</sup> to admit of no other construction, but that it must be to her separate use. And in the case of *Darley v.*

<sup>a</sup> *Dahins v. Beresford*, 1 Ch. Ca. 194; and see *Brown v. Clark*, 3 Ves. 166.

<sup>f</sup> *Jacobs v. Amyatt*, 1 Madd. 376 n.

<sup>g</sup> 4 Madd. 409.

<sup>h</sup> 5 Madd. 491.

<sup>i</sup> And see *ex parte Beilby*, 1 Gl. & Jam. 167.

<sup>k</sup> *Tyrrrell v. Hope*, 2 Atk. 561.

<sup>a</sup> See 7 L. O. 113.      <sup>b</sup> 1 B. C. C. 532.

<sup>c</sup> 1 Sim. & Stu. 487.

<sup>d</sup> 1 Russ. 363.

*Darley*,<sup>1</sup> it was held by the same eminent Judge, that when an estate was given to a husband for the *livelihood* of his wife, or for the *use* of his wife, it was sufficient to shew the intention of the giver, that it should be for her sole and separate use.<sup>m</sup> So where there was a bequest of two bonds and a mortgage to a married woman, with a direction that they should be delivered up to her *when she should demand or require the same*, it is a bequest to her separate use. And in the late case of *Prichard v. Ames*,<sup>n</sup> where a legacy was given to a married woman for her own use, *and at her own disposal*, Baron Graham held that the necessary effect of those words was, to give the legacy to the separate use of the plaintiff; and this decision is in conformity with the earlier case of *Kirk v. Paulin*,<sup>o</sup> where a legacy to a married woman, to be at her disposal, was held to vest in her as separate estate.

But the insertion of the words *sole and separate use*, or either of them, have always been considered of much importance, as affording the best clue to the intention of the testator. Thus, in *Es parte Ray*,<sup>p</sup> where there was a settlement by a lady, about to marry, of her property to trustees, "for her own sole use, benefit, and disposition," it was held by Sir T. Plumer, V. C., that, taking the words *sole use* by themselves, they must have the same meaning as "separate use:" omitting the word *sole*, the property would go to the husband; but he was not at liberty to reject that word; it was an emphatic and operative word. See also *Adamson v. Armitage*,<sup>q</sup> where the same effect is given to the words *sole use*.

We now come to the case which has led us to state the prior cases. We allude to the case of *Massey v. Parker*, of which the first report was given by our own reporter.<sup>r</sup> It has been subsequently reported more fully by Messrs. Mylne & Keen, vol. 2, p. 174; and we consider it so important a decision, that we shall reprint the judgment of the Master of the Rolls *verbatim*, the circumstances of the case being sufficiently stated in our own report. It adverts to some other cases, which we have, therefore, not stated.

Two questions are raised by this demurrer; first, whether the testatrix has by her will given the income of the fund in question to the separate use of her grand-daughter Eliza; and, secondly, whether, if she intended so to do, such intention is now to be carried into effect. The bill, after setting out the will, states that the testatrix died in June 1829; and that in December 1829, the grand-daughter Eliza married one Wood, whose assignee the plaintiff is, and in whose right, as husband of Eliza, the grand-daughter, he now claims the interest of the fund. The question is, whether such statement shews any interest in Wood the husband. It is not material to say much upon the first point, but I am of opinion that the will does not give the interest to Eliza separate from the husband. The cases require very distinct and unequivocal expressions, to create a separate interest in the wife. In *Tyler v. Lake*, 2 Russ. & M. 83, the Lord Chancellor says that the husband is not to be excluded, except by words which leave no doubt of the intention; and of the principle, that case of *Tyler v. Lake*, which is also reported before the Vice Chancellor, 4 Sim. 144, and the case of *Stanton v. Hall*, 2 Russ. & M. 175, afford strong illustration. In neither of these cases did the claim of the wife prevail; although in *Stanton v. Hall* the whole machinery of the instrument proved that such must have been the intention, but the required words of exclusion were wanting; and in *Tyler v. Lake*, the trustees were directed to pay the shares of the trust fund into the proper hands of the married women, to and for their own use and benefit; and if they should be dead, to pay the same to their husbands. Such being the rule, is there in this case no doubt of the intention to exclude the husband? The true construction is quite the other way. There is no mention of the husbands, nor any direct allusion to marriage. There is, indeed, a gift to the children of her grand-children, but there is nothing to shew that the testatrix had present to her mind the right which future husbands of her grand-children would obtain in their property. It is immaterial to consider what effect the words might have had, if used with reference to future husbands of her grand-children, because I am of opinion that they are in this case used with reference, not to any control of such future husbands of the grand-children, but to the possible control of their mother. But the more important question is, whether the intention to give the income for the separate use of the grand-daughter Eliza, if sufficiently expressed, can, under the circumstances, have effect given to it so as to deprive the husband of his ordinary right to the property? The objection is, that the legatee, being unmarried at the time of the testatrix's death, the intended restriction was inconsistent with the nature of the interest given, and therefore inoperative. That an attempt so to fetter the interest of a male legatee cannot succeed, was decided in *Brandon v. Robinson*, 18 Ves. 429; and that the same rule applies to an unmarried female legatee

<sup>1</sup> 3 Atk. 399.

<sup>m</sup> And see the cases referred to, 3 Atk. 399, n. 2, Sand. edit.

<sup>n</sup> Turner, 222.

<sup>o</sup> 9 Vin. Ab. 95. pl. 43.

<sup>p</sup> 1 Madd. 199.

<sup>q</sup> Coop. 283; 19 Ves. 416.

<sup>r</sup> Ante, 203.



is established by *Woodmeston v. Walker*, 2 Rus. & M. 197, and *Brown v. Pocock*, 2 Rus. & M. 218. The only modern case, apparently inconsistent with these decisions, is that of — *v. Lyne*, 1 Yo. 562; but it is to be observed, that the judgment in that case proceeded altogether upon the supposed intention, without reference to the rule of law as established in the other cases. It has also been decided that such fetters, though binding upon a married female legatee during her coverture, cease upon her coming discover. Such is the case of *Barton v. Briscoe*, Jacob, 603. It may indeed be said, that in that case the restriction was confined to the existing coverture; but in *Jones v. Satter*, 2 Rus. & M. 208, a subsequent marriage was in terms provided against; and yet Sir *W. Grant* held that, after the death of the first husband, the legatee had the absolute power over the fund. The only question therefore is, whether, where such fetters are attempted to be imposed upon an unmarried female legatee, and she marries without obtaining payment of the fund, such fetters are to operate during the coverture. Why were they inoperative before her marriage? Because they were inconsistent with the nature of her estate. Her estate and interest were, therefore, absolute before marriage; and the trustee held the legacy for her absolutely. She might have taken it herself, or have given it to any one; and why may she not, by the act of marriage, give it to her husband? Upon principle, therefore, I should not have had any doubt of the right of the husband: but the very point was decided in *Newton v. Reid*, 4 Sim. 141; and that case was alluded to without any expression of disapprobation, by the Lord Chancellor, in *Brown v. Pocock*. I must therefore consider the point as settled. Upon both points, therefore, I am of opinion that Eliza's husband did obtain an interest in his wife's legacy, and that the demurrer must therefore be overruled.

*Massey v. Parker*, 2 M. & K. 181.

#### WEIGHT OF AUTHORITY OF THE SEVERAL JUDGES.

We have already noticed the work of Mr. Ram, on the Science of Legal Judgment, and made several extracts. We are induced to add the following:

A name often augments the authority of a judgment, or opinion, 5 Durn. & E. 556; 6 Durn. & E. 423; 7 Durn. & E. 743; 4 East, 150; 7 Price, 347; 1 Brod. & B. 195; 2 Bing. 295; 5 Ves. 538; 1 Crompt. & M. 308—312.

Such a name is,—

*Littleton*, Willes, 332:

*Coke*, 2 Lord Raym. 1488; Willes, 332; 3 East, 582; 2 Bing. 295, 297; 1 M'Clel. & Y. 319; 3 Atk. 136, 141:

*Brooke*, 1 W. Bl. 140, 1 Eden, 199:

*Popham*, 6 Co. 75; Cro. Jac. 166;—"a

very able judge." By Eyre, C. J., 1 Bos. & P. 610, 3 Ves. 674:

*Hale*, 2 Lord Raym. 1488; Willes, 543, 666; 4 Durn. & E. 311; 5 Durn. & E. 556; 3 Maule & S. 5, 6; 1 M'Clel. & Y. 318; 3 Atk. 136; 2 Eden, 64;—"one of the ablest and most learned judges that ever adorned the profession," by Lord Henley, 1 Eden, 252, 1 W. Bl. 182;—"as correct, as learned, and as humane a judge, as ever graced a bench of justice," by Grose, J., 3 East, 582;—"one of the greatest and best men, who ever sat in judgment," by Lord Kenyon, 1 East, 314:

*Robert*, Willes, 332; 6 Durn. & E. 441;—"a very great man," by Willes, C. J., 2 Wils. 78;—"as great a man as ever lived," by Willes, C. J., 1 Wils. 55:

*Winch*, 6 Durn. & E. 441:

*Hutton*, *ibid.*:

*Twissden*, "a very able lawyer," by Lord Kenyon, 3 Durn. & E. 17;—"a name "of great authority," by Lord Kenyon, 3 Durn. & E. 631:

*Wyndham*, a name "of great authority," by Lord Kenyon, 3 Durn. & E. 631:

*Nottingham*, 7 Durn. & E. 743;—"very great in the knowledge of law and equity," by Lord Henley, 1 Eden, 249;—"that great judge, stiled the father of equity," by Sir R. P. Arden, 5 Ves. 858:

*Somers*, 7 Durn. & E. 743; 4 Ves. 342:

*Holt*, 2 Eden, 64; 7 Durn. & E. 743; 14 East, 145, 146, 151; 1 M'Clel. & Y. 317, 318;—"that great man," "a man above all praise," by Lord Kenyon, 7 Durn. & E. 743;—"whose name gives a sanction to every thing he said," by Lord Kenyon, 6 Durn. & E. 423;—"than whom few more able lawyers ever sat in Westminster Hall," by Hullock, B., 3 Younge & J. 112:

*Powell*, "a lawyer of no mean talent and acquirements," by Bayley, J., 6 Bing. 38;—"one of the most learned judges of his day," by Lord Tenterden, 3 Barn. & Adol. 270;—"who fell little short of Lord Holt himself," by Lord Kenyon, 7 Durn. & E. 743:

*Gould*, 5 Durn. & E. 385:

*Turton*, *ibid.*:

*Treby*, Willes, 666:

*Cowper*, 7 Durn. & E. 743; 1 Turn. & R. 101;—"that great master of equity," by Lord Chancellor Parker, 1 P. W. 543:

*Maccaesfield*, "a great common lawyer," by Lord Eldon, 1 Turn. & R. 101;—"a very great chancellor," by Willes, C. J., Willes, 472;—"an able judge both in law and equity, as ever sat on the bench," by Lord Redesdale, 2 Sch. & Lef. 632:

*Talbot*, a man "of consummate knowledge," by Sir L. Kenyon, 1 Cox, 248;—"a very great chancellor," by Willes, C. J., Willes, 472:

*Jekyll*, a man "of consummate knowledge," by Sir L. Kenyon, 1 Cox, 248:

*Hardwicke*, 5 Ves. 508; 7 Price, 277; 1 Sch. & Lef. 292; 1 Ball & B. 552;—"a great common lawyer," by Lord Eldon, 1 Turn. & R. 101;—"a great authority," by Lord Kenyon, 3 Durn. & E. 371;—"and of whom Lord Kenyon has thus spoken,—"I am old enough

to remember that great judge, though but for a short time, before he left the Court of Chancery; and the knowledge of those, who lived before me, only fortified me in the opinion I formed of him, that his knowledge of the law was most extraordinary; he had been trained up very early in the pursuit, he had great industry and abilities, and was in short a consummate master of the profession," 7 Durn. & E. 416:

*Comyns*, 3 Durn. & E. 631; 8 Durn. & E. 378;—"a very able common lawyer," by Lord Hardwicke, 3 Atk. 16;—"a very great judge," by Alexander, C. B., M'Clel. 137;—"considered by his contemporaries as the most able lawyer in Westminster Hall," by Lord Kenyon, 3 Durn. & E. 64:

*Mansfield*, 6 Durn. & E. 423; 7 Durn. & E. 222; 8 Durn. & E. 23; 2 Bing. 309; 7 Price, 347; 1 Crompt. & M. 308, 309;—"the great Lord Mansfield," by Alexander, C. B., M'Clel. 449;—"the founder of the commercial law of this country," by Buller, J., 2 Durn. & E. 73;—"a very eminent judge," by Lord Eldon, 2 Dow, 306;—"one of the greatest judges that ever sat in Westminster Hall," by Lord Eldon, 1 Dow. & Cl. 543; "who will be remembered as long as the law of England or of Scotland exists," by Lord Eldon, 2 Dow, 311:

*Northington*, "a great lawyer," by Lord Eldon, 6 Ves. 640;—"a very excellent equity judge," by Graham, B., 10 Price, 278:

Chief Justice *Willes*, "no mean authority," by Park, J., 3 Bing. 549;—"certainly a very great common lawyer," by Lord Eldon, 7 Price, 609:

*Thurlow*, 3 Ves. 630; 5 Ves. 538; 10 Price, 278;—"a great judge," by Sir R. P. Arden, 4 Bro. C. C. 511:

*Eyre*, "who was always considered to be a strong-headed man," by Richards, C. B., 10 Price, 42:

*Alvanley*, 15 East, 198; 3 Dow, 11;—"one of the safest guides in Westminster Hall," by Best, C. J., 4 Bing. 242:

*De Grey*, "a most learned judge," by Lord Ellenborough, 14 East, 148, 149;—"a very eminent judge," by Lord Eldon, 6 Bing. 22, 3 Bligh New Rep. 156:

*Denison*, "a most excellent lawyer," by Park, J., 12 Moore, 183:

*Heath*, "a very learned judge," by Abbott, C. J., 5 Barn. & Cr. 576;—"an eminent lawyer," by Park, J., 9 Bing. 641;—"a judge eminently versed in the knowledge of conveyancing," by Lord Eldon, 10 Ves. 263:

*Chambre*, M'Clel. 632; 4 Moore & P. 70;—"an eminent lawyer," by Park, J., 9 Bing. 641;—"whose opinion is entitled to great weight," by Lord Ellenborough, 4 East, 150.

*Ashurst*, 5 Taunt. 671;—"who "was always reckoned a learned judge," by Park, J., 1 Crompt. & M. 310:

*Buller*, 5 Taunt. 671;—"of whose high legal character, all the profession formed a very just estimate," by Park, J., 1 Crompt. & M. 310. See also 8 Durn. & E. 593:

*Gibbs*, "one of the most learned and acute judges, that ever sat in Westminster Hall," by

Lord Tenterden, 2 Barn. & Adol. 697:

*Richards*, "very learned," by Sir T. Plumer, 1 Turn. & R. 252;—"an eminent equity judge," by Lord Lyndhurst, 1 Dow & Cl. 150;—"and, "than whom," observes Hullock, B., in the Court of Exchequer, "an abler equity lawyer never sat here," M'Clel. 24; 13 Price, 73:

*Burrough*, 1 Crompt. & M. 311;—"a man who for legal knowledge, and sound and correct understanding, was of no ordinary size," by Park, J., 8 Bing. 534:

*Tenterden*, "eminently learned and accurate," by Tindal, C. J., 1 Crompt. & M. 322:

*Eldon*, "the greatest judge in this country," by Sir T. Plumer, 2 Madd. 433.

## DOUBTS ON THE NEW STATUTES.

### APPORTIONMENT OF RENTS.\*

Sir,

My attention being called to the letter of your Correspondent S. W. S. on the above subject, I cannot refuse to support my own position.

I am rather unjustly accused of avoiding the question; but on reference to the case put by S. W. S. (vol. 8. p. 460), on which the doubt arose, it will be found to be the same as he now puts, (p. 166, *ante*), and on reference to my remarks (101, *ante*), it will be found, that it was upon that case, and that case alone, (no question being raised upon continuing rents), that I was arguing.

Previous to the act, an annuity like that as supposed by S. W. S. without words of apportionment, was unapportionable; but the effect of adding words of apportionment, was to make the annuity due, *de die in diem*, with the day of payment postponed, as to payment days happening in the annuitant's life-time; but as to the odd days, no postponement being given, the annuity might, for the apportioned part, be sued for immediately. The act has done no more than add these words to all deeds, &c. coming into operation since it passed, as regards those annuities, &c. which were determinable, as well as continuing interests.

Our question is on a determinable payment, as put by S. W. S., who argues, that no remedy exists under the act, as the time supposed can never possibly arrive. I dare say he will stare, when I say I agree with him, that no remedy exists under the act, and that I equally agree with him, that the supposed time he speaks of can never arrive; but agreeing thus far with him, I now assert in answer to his query, *that it could not be clearer that A. is entitled to a proportionate part of the annuity up to B.'s death, and that he may on any day, or at any time within the known limit of the Statutes of Limitation, proceed for its recovery.*

\* Vol. 8. p. 460. Vol. 9. 101. 166.

On reference to my previous remarks, it will be found, that I argued not in favor of the annuitant supposed, having a remedy under the act, for a very good reason—because I saw that the moment a right was given him, he had no further necessity to look to the statute, as the common law gave him such remedy. By reading the first half of the 2d section of the act, down to where the remedy is spoken of, no one will deny, that a right of apportionment is given both to determinable as well as continuing annuities, &c.: here would a party holding a determinable annuity, &c., and seeking an apportionment, stop. Up then would start S. W. S., and say, “you have no right to rest upon half a clause, for on reading the portion relating to the remedy, you will find, that as the annuity ceased by the death of B., a full payment never by possibility could become due, therefore a time for suing for your apportionment must be equally distant. And that *every such person, &c.* shall have such and the same remedies, &c. for recovering such apportioned part, &c. *when* the entire portion of which such apportioned part shall form part, shall become due and payable, and not before.” The annuitant’s reply would naturally follow, “true it is, that if you can make any benefit by the portion of the clause you cite, do so; but the legislature having in words at the beginning of the clause shewn, that they intended to include both determinable and continuing annuities, &c. it falls upon you to shew that I come within the whole of the clause, and thereby lose what I have only the moment before gained; or in other words, I have a right given under the act, but no remedy. If you cannot hook me into the second part, then am I entitled to resort to my common law remedy, to shew that I am not within it; I say, I am one, a full payment of whose annuity cannot even by possibility come due, and therefore *reddendo singulo singulis*, the words *every such person*, can only apply *when* the entire portion can by possibility become payable and that such portion of the section, is only a restraint on the general right given to all, in the first part of the section, and being a restraint, must be construed strictly.”

I have thus rested myself upon the right given by the act, and, not like others having any restraint imposed upon me, I have nothing more to do than to seek the quickest remedy for recovering my apportionment, which would be the same as that I possessed under any deed which contained words of apportionment.

Should it ever be requisite, in construing the act, to resort to the rules for construing acts in general, and this being a remedial act, would a Judge, who, under such circumstances, would be bound to look to the old law—the mischief and the remedy—hold that parties whose interest ceased by death, and no further payment could by possibility become payable, could not recover an apportionment? This would be much worse than refusing it to parties where there was a continuing payment, as in the first case; no one would be able to benefit, although only one day was wanting from the day of payment; whereas in the se-

cond case, the party liable to pay, must pay it either to the tenant for life, or the remainderman. M.

#### EXCHANGE OF LANDS IN COMMON FIELDS.<sup>b</sup>

Sir,

All statutes, as they appear upon the Rolls of Parliament, are written from beginning to end without a single stop or parenthesis; and although a copy by the King’s printer is made evidence to all the world, it is only evidence of so many words composing such act of Parliament; and because in the copy introduced into the house, there may exist stops, or a parenthesis, for the facilitating an explanation to the members, it does not follow that a party is bound by those stops or parentheses, but may, if he can, shew that a sentence will bear two different grammatical constructions. If only one grammatical construction can be put upon a sentence, and such construction goes beyond the preamble, then it is time to ask if the preamble shall have any restraining effect.

If, as I say above, two grammatical constructions can be put upon a sentence, one being admitted to go beyond, the other decidedly keeping within the preamble; I then ask, which is to be preferred? few I think, would maintain, that the one without the preamble was to be supported; and if the one within the preamble was the right one, then I hold, that it is maintained independent of the preamble; for as Lord *Tenterden* remarks, 1 B. & Ad. 558. “It is very true, that the enacting words of an act of Parliament, are not always to be limited by the words of the preamble, but must in many instances go beyond it. Yet on a sound construction of every act of Parliament, I take it, the words in the enacting part must be confined to that which is the plain object and general intention of the legislature in passing the act, and that the preamble affords a good clue to discover what that object was.” If this reasoning be true, I hold, a party keeping within the enacting words, takes by them without the aid of the preamble. To the point then in dispute; S. W. S. alleges, that the land taken in exchange may be anywhere, according to his grammatical construction of the section, and, therefore, beyond the bounds of the parish, or any adjoining parish in which the land given in exchange might lie, and so *vice versa*. The preamble stating, “whereas it is expedient to facilitate the exchange of pieces of land lying intermixed and dispersed in common fields, meadows or pastures, for other pieces of land, either lying therein, or being part of the inclosed lands in the same or any adjoining parish.” Now what I maintain is, that two grammatical constructions can be put upon this section, and that the one I now give is the true one, as confining itself within the preamble. “It shall be lawful for any such person, &c. by such deed, and with such consent as

<sup>b</sup> Vol. 8. p. 460. Vol. 9. 101. 166.

hereinafter mentioned, to grant and convey such land, or any part thereof, to any other person, in lieu of, and in exchange for any other land, [whether lying in the same, or any other common field, or for any inclosed land] lying within the same, or any adjoining parish."

No rule of grammar preventing a person from supplying such bracket, if necessary, to the reading of a sentence, I conceive, the sentence would thus bear a grammatical construction, different from that put upon it by S. W. S., and would at the same time come within the preamble of the act; nor do I conceive that it would be going too far, to hold, that the words within the brackets are synonymous with the words, "whether being common field, or enclosed land" lying, &c., and which would, perhaps, have expressed the meaning of the legislature better; but because a sentence is confused, I do not conceive it to be a natural conclusion that it is therefore bad grammar.

M.

### PAYMENT OF DEBTS OUT OF ESTATES.

THE object of this inquiry is to shew, how far at the present day a person is prevented from acting the part of a sinner in his grave. As regards the means of preventing the payment of his debts out of his personal estate, I think it may be admitted that at no time have the Courts (with one exception of my Lord *Brougham*) lent themselves to the support of a trust which could in anywise lead to the depriving the creditor of his natural fund for the payment of his debts. The exception to which allusion is above made, is the case of *Jones v. Scott*, 1 Russ. & Myl., in which case Lord *Brougham* decided that the words "I direct the payment of my just debts," or words of like effect—(I quote from memory)—sufficient at least, if there had been real estate, to raise a charge upon it,—standing, as they did, in a will of personality alone, created a trust in favour of creditors, and prevented the statute from running against such creditors. This is a case standing by itself, and its soundness is much quarrelled with by the profession. I next turn to the payment of debts out of real estate, in which it will be found that Equity has been more anxious at all times than the Legislature, in trying to make men die honest.

By Common Law the heir was only bound to pay his ancestor's debts to the value of land

descended from the ancestor; and this only when he was specially named. At the same time the ancestor had the means, by devise, of breaking the descent, and the heir might also, before action brought, have aliened the land; and in either case the creditor was deprived of his remedy.

Thus stood the law at the 3d of W. & M. c. 14, which enabled a party to sue a devisee jointly with the heir in debt, thereby leaving the parties without remedy whose demand was on a covenant or other speciality, or in case the heir could not be found (e. g. the testator being a hastyard). The party had no remedy against the heir alone. Land bona fide aliened before action was protected from execution; and also devises made for payment of debts, &c. The necessity of joining the heir is since abolished by the 1 W. 4, c. 47, and the remedy extended to covenants as well as other speciality.

Simple contract creditors were indirectly benefited by these acts, as they received a legislative decision that the devises for payment of debts, whereby in equity they had come in *pari passu* with the speciality creditors, were valid. How such creditors came in upon the realty, without such devise, was by the aid of Equity, in those cases in which speciality creditors had exhausted the simple contract creditors' only fund, and to the extent that he had so exhausted it they were allowed to charge the real estate. This system in Equity, called *marshalling*, is carried to a great extent in favour of creditors, and even of legatees; but the subject would fill a volume. Confining ourselves, then, to the remedies thus provided for payment of debts, it will follow that if a party died without leaving any personality, and having devised away his realty,—not being a trader, (as in such cases, by 47 G. 3, c. 74, now embodied into 1 W. 4, c. 47, his real estate was made assets for payment of debts) his simple contract creditors were left unpaid. Sir Samuel Romilly, a lover of his country, strove hard while in parliament to remedy such evil; but he did not live to see it accomplished. As the legislature never considered a simple contract creditor worthy of protection, until by 3 & 4 W. 4, c. 104, they declared that real estate, subject to a priority in favour of specialties, binding the heir, should be liable to the payment of simple contract creditors; and this applies to copyhold and other customary estates, and also to incorporeal as well as corporeal hereditaments.

E. I.

### ADMISSION OF SOLICITORS IN CHANCERY.

#### Clerks' Names.

George Dawes, Angel Court.

Francis Roxburgh, 42, High Street, Camden Town.

#### To whom articulated.

Wm. Malton, Carey Street; assigned to Tho. Dawes, Angel Court.

John Morgan, Great James Street; assigned to J. H. Tristram, Nicholas Lane.

To be admitted at the Rolls the day after the present Term.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## PRACTICE.—CONTEMPT.—ATTACHMENT.

*An attachment against a party for non-payment of costs, is irregularly executed, and is for that reason discharged by the party issuing it, without any condition. Another attachment for the same contempt is issued, and the party is arrested on that, and kept in prison upon it and other detainers: Held, that this second attachment is not irregular.*

Mr. Wakefield moved that the plaintiff be discharged from the Fleet prison, to which he was committed upon an attachment for non-payment of costs. He stated the several proceedings in this and in the Lord Mayor's Court in London, and that the plaintiff's bill here was dismissed with costs, which were subsequently taxed. The plaintiff was invited—rather inveigled—to the Registrar's office, under pretence of passing the minutes of the decree made against him, when, as he was coming out, he was met in the passage between the Registrar's and Accountant-General's offices by two bailiffs, and taken upon an attachment for contempt, in not paying the costs. This arrest was a contempt of Court, as being executed in a privileged place and within the precincts of the Court, while the suitor was engaged in the suit. The attachment itself was irregular, as not having been previously entered with the registrar, as is the universal practice; but it was on the irregularity of the execution of the process, and not on the irregularity of the process itself, that he grounded his application for the discharge of the prisoner from the contempt, as well as from the imprisonment. The first arrest being irregular, all subsequent detainers were also irregular. The clerk in court for the defendants, knowing that the process was irregular and irregularly executed, consented, of his own accord, to discharge that attachment without any consideration from the plaintiff; but instead of discharging him from custody a second attachment was issued, upon which and upon the detainers subsequently issued, the plaintiff had been detained in custody now for eighteen months. The facts, as he stated them, were sworn to by the plaintiff in his affidavit in support of this motion, and upon those facts it was clear that the first attachment was irregularly executed; but that attachment never having been discharged, as it might be by application to the Court, a second attachment for the same duty was wholly irregular after the first was executed. That the first attachment was irregularly executed, was clearly shewn by a late case, in which a Mr. Orchard ran a race against the sheriff's officers from the end of Chancery Lane to the door of the Vice Chancellor's Court, where the officers overtook and arrested him, but he was discharged, and the arrest declared irregular.

That case was precisely like the present, except that the present was stronger, by reason of the party being inveigled to the Registrar's office. There were many other cases, of which he cited eight,—four, viz. *Guseygue's case*,<sup>a</sup> *Castle's case*,<sup>b</sup> *Franklin v. Colquhoun*,<sup>c</sup> and *ex parte Byne*,<sup>d</sup> on the authority of which he insisted that the plaintiff was entitled to his discharge from the attachment. On the principle laid down in the other four, viz. *ex parte Ledwick*,<sup>e</sup> *Sedgier v. Birch*,<sup>f</sup> *Bromley v. Holland*,<sup>g</sup> and *ex parte Hawkins*,<sup>h</sup> the plaintiff was entitled to be discharged from all subsequent detainers. When this motion was made before Lord Chancellor Brougham—who gave no opinion upon it—the case of *Wood v. Watts*<sup>i</sup> was cited on the other side; but that case clearly favored this application. The general proposition for which he contended, and which he elicited from these latter cases, was that where a party consents to discharge another from a process without condition, he cannot have a second process against him for the same duty, but the party is wholly discharged.

Mr. Beames appeared to oppose the motion.

The Lord Chancellor was of opinion that the cases cited did not rule this case, although they might be applicable in support of a motion to discharge the prisoner from the first arrest. The clerk in court finding that that was irregular, issued another attachment, which was regularly entered and executed. It was not uncommon, as the registrar informed him, to issue two attachments against the same party at the same time into different counties, if the party had two residences, or if he was in one county while his residence was in another. Here, it appeared, the first attachment was in Middlesex, the other in London, where the prisoner's residence was. But he did not know of any case in which it was laid down that the solicitor or clerk in court was not at liberty to correct his error at his own expense, by cancelling the first process and issuing another. The motion is refused, and the prisoner must be remanded.

*Andrews v. Walton*, Sittings at Lincoln's Inn, December 24th, 1834.

## SCHEDULE OF FEES.—CONSTRUCTION.

*Held, that the Master is to have but one fee for the sale of a property in several lots to different purchasers, in one day.*

Mr. Lynch repeated an application—made by Mr. Kinderley on a former day, in another case—for the Lord Chancellor's construction of that item in the first Schedule of Fees annexed to the New Orders (December 1833) relating to a sale by the Master under a decree of the Court. The words are—"Upon every sale by the Master, where the purchase money

<sup>a</sup> 14 Ves. 183.

<sup>b</sup> 16 Ves. 412.

<sup>c</sup> 1 Madd. 583.

<sup>d</sup> 1 Ves. & B. 316.

<sup>e</sup> 8 Ves. 598.

<sup>f</sup> 9 Ves. 69.

<sup>g</sup> 5 Ves. 3.

<sup>h</sup> 4 Ves. 691.

<sup>i</sup> 6 Maule & Selwyn, 7.

does not exceed 2000*l.*, payable on the report confirmed absolute, by such party as the Master shall direct, 5*l.*"—In the present case the property was sold in lots to different purchasers, all in one day, and it may be said at one sale, though to several buyers; and the question was, whether the Master was entitled to have the fee of 5*l.* on every lot so sold, or only that one fee on the whole of the lots.

The Lord Chancellor, considering that all the lots sold were one property, and that they were sold in one day, at one and the same sale, was of opinion that the Master was entitled only to the one fee.

*Windsor v. Terrill*, Sittings at Lincoln's Inn, after Michaelmas Term, 1834.

#### PRACTICE.—INROLMENT OF DECREES.

*Circumstances in which the inrolment of a decree was vacated, on the ground of surprise on the party, who intimated his intention to appeal from it to this Court.*

This was a motion to vacate the inrolment of a decree.

Mr. Tinsley and Mr. Wilbraham in support of the motion, on behalf of the plaintiff, urged the inexpediency of dispatch in inrolling decrees, as it prevented the parties from a re-hearing of their cause in this Court, and compelled them to appeal to the House of Lords, at great expense, if they thought the decree unjustly made. The decree, in the present case, was pronounced by the Master of the Rolls on the 17th of July last: it was drawn up and passed by the registrar, at the desire and in the presence of the defendant's solicitor alone, on the 12th of August following, and signed by the Lord Chancellor, and inrolled in a day or two after, although the solicitors for the defendant were apprised that the plaintiff meant to petition for a re-hearing. From the correspondence which passed between the solicitors on both sides after the decree was made, and the affidavits filed with a view to this motion, it appeared that the plaintiff's solicitor was not aware of the necessity of entering a caveat against the inrolment, as, in his experience, he never knew of a decree having been drawn up without notice to the solicitors on the other side. He had also told the solicitor on the other side that he was preparing a petition of appeal or re-hearing in this Court; and that gentleman, in his letter to him, said, "It might be as well to settle the amount of the rent of the estate before we go into the appeal,"—words which clearly proved the writer was made acquainted with the intention to appeal, and that he meant to prevent it, by his extraordinary quickness in procuring the inrolment of the decree. They cited *Kemp v. Squire*,<sup>a</sup> an anonymous case,<sup>b</sup> in the first of Vesey, sen.,—in which latter the enrolment was vacated under circumstances precisely similar to the present case,—and the case of *Stevens v. Guppy*.<sup>c</sup>

Mr. Wigram opposed the motion.—There was no irregularity in the inrolment: it was the duty of the defendant's solicitor to secure the benefit of the decree. No one could suppose that the losing party would be in haste to draw up an order against himself. The proper way to prevent the inrolment was to enter a caveat; if the plaintiff neglected that he had to blame himself. The clerk of the solicitors for the defendant swears in his affidavit, that he is in the constant habit of getting orders drawn up without notice to the other side.

The Lord Chancellor.—The registrar tells me that it is usual to give such notice.

Mr. Wigram hoped his Lordship would inquire into the practice before he decided this motion. He did not dispute the cases cited—they rested on their own circumstances—but he found two more recent cases the other way, *Barnes v. Wilson*,<sup>d</sup> and *Balguy v. Chorley*.<sup>e</sup> The inrolment of a decree was a matter of strict right. There was no fraud or misrepresentation in this case; on the contrary, the defendant's solicitor said, in his letter to the solicitor on this side, "I cannot take notice of your intention to appeal, and I will not suffer any delay in securing to my client the benefit of his Honor's decree." There was nothing in that letter to mislead the other side.

Mr. Tinsley.—The practice is stated by the registrar to be, to give notice of drawing up the order. This decree was of such a nature that it ought not to be drawn up except in the presence of both solicitors. But, independent of the practice, it was clear from the circumstances stated in the affidavit and letters, that the plaintiff was taken by surprise. All the conversations and correspondence were on the understanding that both parties were preparing for a re-hearing.

The Lord Chancellor.—It is no irregularity to use dispatch; but it seems here that the plaintiff's solicitor was put off his guard by the conversations and letter of the defendant's solicitor, who writes "the rent must be fixed subject to the decision on the appeal." Words certainly as strong as those on which Lord Eldon vacated the inrolment in the case of *Stevens v. Guppy*. Following that decision, I am of opinion that this is a case of surprise upon the plaintiff.

*Whitaker v. —*, Sittings at Lincoln's Inn, after Michaelmas Term, 1834.

#### King's Bench Practice Court.

##### LONDON COURT OF REQUESTS.—RENT.— LODGINGS.

*Where an action is brought for the use and occupation of furnished lodgings, it is not within the compulsory jurisdiction of the London Court of Requests Act.*

In this case a rule nisi had been obtained to deprive the plaintiff of his costs, on the ground

<sup>a</sup> 1 Ves. sen. 205.

<sup>b</sup> *Ibid*, 326.

<sup>c</sup> 1 Turn. & R. 178.

<sup>d</sup> 1 Russ. & Myl. 486.

<sup>e</sup> 1 Myl. & K. 640.

of his not having recovered to the amount of 5*l.* in an action against the defendant, which might have been brought in the London Court of Requests. This action, it appeared, was brought for the use of certain furnished apartments, and the plaintiff had a verdict for 2*l.* 10*s.*

On shewing cause against this rule, it was contended, that the jurisdiction of the London Court of Requests did not extend to cases like the present, as was shewn by sec. 13, of the 39 & 40 Geo. 3, c. 104.

In support of this rule, it was submitted, that the action was brought principally for the use of the furniture. It was evident that the plaintiff considered the use of the furniture as his chief ground of action, he having left the allegation "furnished" in his declaration. It is therefore clear that sec. 13 of the London Court of Requests Act, does not apply to the present case.

*Williams*, J. was of opinion that this case was within the meaning of sec. 13 of the above act. This rule must therefore be discharged, and the costs will be costs in the cause.

Rule discharged.—*Kidd v. Mason*, M. T. 1834. K. B. P. C.

#### MAKING RULE ABSOLUTE.—REVIVING RULE.

*A rule may be revived if it has not been enlarged or made absolute in due time.*

This was an application, on the last day but one of term, to make a rule *nisi* absolute, which had been drawn up to shew cause in the previous term. Cause was not shewn against it, nor was it enlarged.

*Williams*, J., thought that the application to make the rule absolute was too late. He, however, said that a motion might now be made to revive the rule to shew cause the first day of next term, or to-morrow (the last day of the present term), provided the revived rule be served before nine o'clock to-night.

Rule accordingly.—*Smith v. Collier*, M. T. 1834. K. B. P. C.

#### CERTIORARI.—JURISDICTION OF JUSTICES.—CLAIM OF RIGHT.—TOLLS.

*In order to oust justices of their jurisdiction, where a claim of right is set up, it must appear that the claim is bonâ fide.*

In this case an application was made to the Court for a writ of *certiorari*, to be directed to certain justices of the peace, directing them to return a conviction by them of a person named Roberts, for improperly receiving certain tolls, contrary to the provisions of a private act of parliament. The ground of the application was, that the tolls had been taken under a claim of right; consequently the justices had no jurisdiction. A rule was obtained, and cause shewn against it.

*Cur. adv. vult.*

*Taunton*, J.—I am of opinion that the justices had jurisdiction over the subject. It was

argued that Roberts having contended before the justices that he had acted under a claim of right, the justices were ousted of their jurisdiction; but I think not. Merely shewing that the tolls were taken under a claim of right, without shewing that such claim was a *bonâ fide* claim, is not sufficient to oust the justices of their jurisdiction. It is for them to judge whether the claim in this case is *bonâ fide*, or not. They having done so, and decided it was not, the present rule must be discharged, with costs.

Rule discharged, with costs.—*Res v. The Justices of Hampshire*, M. T. 1834. K. B. P. C.

#### Common Pleas.

#### BAIL.—IRREGULARITY.—WAIVER.—JUDICIAL NOTICE.

*If an irregularity is brought before the notice of the Court it will be noticed, although the opposite party has waived it.*

In this case bail justified without opposition. In the notice of justification no statement was introduced that they had been resident in their present abodes for the last six months.

*Archbold* mentioned the case to the Court, and suggested that the plaintiff had waived the irregularity by not making the objection at the time of justifying. In *Bigg v. Dick*, it was held, that the want of a description of bail was cured by the plaintiff's excepting to them. Now this case was much stronger, for the plaintiff did not oppose the justification.

*Per Curiam*.—As this irregularity is brought before us we are bound to notice it. The defendant may, however, take four days time to amend his notice.

Rule accordingly.—*Dogherty's bail*, M. T. 1834. C. P.

#### ATTORNEY'S BILL.—PLEADING.—REPLICATION.—PLEA.—DEMURRER.

*A replication must not merely answer a plea in point of form, by merely following the words of a plea, but it must also answer it in substance.*

This was an action for an attorney's bill. The defendant pleaded that the charges in the declaration were "charges at law and in equity," and that the plaintiff had not delivered a signed bill before commencing his action. Replication, that the charges mentioned in the declaration were not "charges at law and in equity." To this defendant demurred, on the ground that the replication was in the conjunctive, instead of the disjunctive.

*Per Curiam*.—The act requires attorneys' bills to be delivered in one month before action brought, if they contain charges for fees in law or equity. The plea suggests that it came within the statute. The plaintiff should have replied, that his bill contained charges neither in law nor equity.

Judgment for the defendant.—*Moore v. Bolcott*, M. T. 1834. C. P.

**PLEADING RULES.—GOODS BARGAINED AND SOLD.—GENERAL ISSUE.**

*Where a declaration is in the common form for goods bargained and sold, and the defendant pleads the general issue, evidence may be given of a special contract.*

On a motion for leave to plead several matters, it appeared that the declaration was in the common form for goods bargained and sold. The defendant set up as a defence, that the goods were bargained and sold under a special written contract, containing two conditions, neither of which had been complied with. The defendant had already pleaded the general issue. The question was, whether proof of these facts could be given under the general issue.

*Per Curiam.*—Evidence of the special contract may be given under the general issue.

Motion refused.—*Gardner v. Alexander*, M. T. 1834. C. P.

**Exchequer of Pleas.**

**EXECUTOR.—ACCOUNTING ON OATH.—COSTS.—LEGACY.**

*The 53 G. 3, c. 108, s. 23, as to executors accounting on oath and paying legacy duties, does not necessarily require the Court to make the rule against them absolute, with costs.*

In this case the Court had granted a motion calling upon an executor to account upon oath, and pay the legacy duties.

It was now contended, under the authority of sec. 23, of the 53 G. 3, c. 108, that this rule should be made absolute, with costs.

*Parke, B.*, said he did not consider the act imperative as regards the costs, and that, under all the circumstances, he thought this rule ought to be absolute, without costs.

Rule absolute, without costs.—*Ex parte Strutt*, M. T. 1834. Excheq.

**SHERIFF.—PRINCIPAL AND AGENT.—UNDERTAKING.—PLEA.**

*A sheriff is not in all cases bound by the undertaking of his officer.*

This was an application to the Court to grant an attachment, or compel a sheriff's officer to fulfil an undertaking given by him to the plaintiff, by which he promised that the plea pleaded in this action should be withdrawn, and that the plaintiff should have judgment dated the 8th day of August, 1834.

*Gurney, B.*—I do not think the sheriff ought to be bound by the undertaking of the officer. The present rule must therefore be discharged.

Rule discharged.—*Brown v. Gerard, Bart.*, late Sheriff of Lancashire, M. T. 1834. Excheq.

**IRREGULARITY.—DECLARATION.—JUDGMENT.—LACHES.**

*What is too great a delay in making an*

*application to set aside proceedings for irregularity.*

In this case a rule nisi had been obtained for setting aside the declaration, on the ground of its being improperly filed, instead of being delivered, and the judgment signed thereon.

On shewing cause, it was contended, that this application was too late. The notice of inquiry was given on the 4th, for the 12th, on which day the motion was made.

*Gurney, B.*, thought the application was too late, and discharged the rule.

*Scott v. Cogger*, M. T. 1834. Excheq.

**STRIKING OUT CASE.—SPECIAL PAPER.—DELIVERING PAPER-BOOKS.**

*A case must be struck out of the special paper if all the paper-books are not delivered by one party or the other.*

This case was ordered to be struck out of the special paper, on the ground of the defendant not having delivered his paper-books, and the plaintiff's neglecting to do so for him.

On the part of the plaintiff, it was contended, that the terms of the rule were, that if one party neglected to deliver his paper-books, the other party may do so for him. He was not therefore, by the rule, compelled to deliver them.

*Parke, B.*—If the plaintiff had delivered all the books he would have been entitled to judgment; but as he has only delivered his own, and the defendant has delivered none of his, the case must be struck out.

Cause struck out.—*Abram v. Cook*, M. T. 1834. Excheq.

**SEVERAL ISSUES.—JUDGE'S NOTES.—AMENDMENT OF FINDING.**

*Where the jury has substantially found on several issues, but by inadvertence they are discharged as to one, the mistake must be corrected by the Judge's notes.*

This was an application for a new trial. The facts of the case appeared to be these:—It was an action of trespass brought by the plaintiff against several defendants, to which they pleaded the general issue, except as to one trespass, to which they pleaded that they entered the plaintiff's house to extinguish a fire, and to prevent him burning his house down. The cause was tried at the assizes, and the jury found a verdict against two of the defendants, and that the allegation as to the fire was false. In consequence of the length of time the jury were deliberating, the Judge took their verdict at his lodgings. As to the second issue he discharged the jury, considering the defendants' plea of the general issue was to the whole of the declaration.

*Per Curiam.*—The proper course will be to apply to the Judge who tried the cause, to correct the verdict according to his notes.

Rule refused.—*Iles v. Turner and others*, M. T. 1834. Excheq.



## SITTINGS IN CHANCERY.

*Hilary Term, 1835.*

LORD CHANCELLOR.

*At Westminster.*

Saturday	Jan. 17	} Re-hearings and Appeals.
Monday	19	
Tuesday	20	
Wednesday	21	} Re-hearings & Appeals.
Thursday	22	
Friday	23	
Saturday	24	} Re-hearings & Appeals.
Monday	26	
Tuesday	27	
Wednesday	28	} Motions.
Thursday	29	
Friday	30	
Saturday	31	} Motions.

VICE CHANCELLOR.

*At Westminster.*

Saturday	Jan. 17	} Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Monday	19	
Tuesday	20	
Wednesday	21	} Motions.
Thursday	22	
Friday	23	
Saturday	24	} Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Monday	26	
Tuesday	27	
Wednesday	28	} Short Causes and Do.
Thursday	29	
Friday	30	
Saturday	31	} Motions.

BEFORE THE MASTER OF THE ROLLS.

*At Westminster.*

Saturday	Jan. 17	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday	19	
Tuesday	20	
Wednesday	21	} Causes, Further Directions, and Petitions by Consent; — after which, Motions.
Thursday	22	
Friday	23	
Saturday	24	} Pleas, Demurrers, Causes, Further Directions & Exceptions.
Monday	26	
Tuesday	27	
Wednesday	28	} Causes, Further Directions, and Petitions by Consent; — after which, Motions.
Thursday	29	
Friday	30	
Saturday	31	} Causes, Further Directions, and Petitions by Consent; — after which, Motions.

*After Term, at the Rolls.*

Monday	Feb. 2	} Petitions in the General Paper, after swearing in the Solicitors.
Tuesday	3	

## KING'S BENCH SITTINGS.

*In Term.*

MIDDLESEX.

LONDON.

Thursday	Jan. 29	Friday	Jan. 30
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*After Term.*

Monday	Feb. 2	Tuesday	Feb. 3
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The Court will sit at Eleven o'clock in Term, in Middlesex; at Twelve in London; and in both at half-past Nine after Term.

Causes untried on the Lists for the 13th and 16th, will be taken on the 14th, 15th, 17th, and 19th.

None but undefended Causes will be tried on the 29th and 30th of January.

## COMMON PLEAS SITTINGS.

MIDDLESEX.

LONDON.

*In Term.*

Wednesday	Jan. 21	Friday	Jan. 23
Wednesday	Jan. 28		

*After Term.*

Monday	Feb. 2	Tuesday	Feb. 3
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The Court will sit at Ten o'clock in the forenoon on each of the days in Term; and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

## EXCHEQUER OF PLEAS SITTINGS.

*In Term.*

MIDDLESEX.

First Sittings	Wednesday, January 21
Second Sittings	Monday

The Court will sit in Middlesex, by Adjournment, on

Thursday, January 22  
Tuesday, January 27

LONDON.

First Sittings	Saturday, January 17
Second Sittings	Thursday

After Term.

MIDDLESEX.

LONDON.

Monday . . Feb. 2 | Tuesday . . Feb. 3

New causes entered for the sittings in Hilary Term, will be taken in Term.

Short Remanets may be taken in Term in Middlesex only by consent.

The Court will sit at Ten o'clock.

EQUITY EXCHEQUER SITTINGS.

Friday .	Jan. 23	{ Motions and General Business.
Saturday .	24	Petitions and Causes.
Wednesday .	28	{ Motions and General Business.
Thursday .	29	{ Petitions, Causes, and Motions.
Friday .	30	{ Motions and General Business.

[The Sitting's Papers were omitted by mistake last week, and the sittings from the day of publication only are stated.]

ANSWERS TO QUERIES.

Law of Landlord and Tenant.

ADVERSE POSSESSION. P. 63.

The possession, I think, is adverse. Before the recent act for the Limitation of Actions, twenty years' possession by a tenant, without paying rent or acknowledging his landlord, would so far have given him a title that no action of ejectment could have been brought against him, and the owner would have been driven to his possessory action. The 2 & 3 W. 4, c. 27, gives a title on twenty years' adverse possession. The 15th section of the act only applies where the possession was *not* adverse at the time of the passing of the act.

The same answer will apply, *mutatis mutandis*, to J. W.'s query.

SPES.

ARREARS OF RENT. P. 141.

M. J. M., after giving an opinion upon the construction of the new Statute of Limitation, as it relates to rent due upon an indenture of lease, does not think it necessary to allude to 3 & 4 W. 4, c. 42, in consequence of the proviso, "that nothing therein contained shall extend to any action *given by any statute*, where the time for bringing such action is, or shall be by any statute specifically limited,"

which (according to his opinion), is the case with sec. 2 of 3 & 4 W. 4, c. 27, which expressly states, "that no person shall make a distress, or bring an action to recover any rent, but within 20 years after the right accrued to him." Now I submit, that M. J. M. is quite wrong in supposing that the proviso has the effect mentioned by him. A statute of limitation, as such, does not give an action; on the contrary, it limits a pre-existing right of action. The same statute may give an action, and also limit the time for bringing the same; but such is not the case with the new Limitation Act; the rent mentioned in that statute, does not, it seems, include rent reserved upon common leases, which is now provided for by the subsequent act of 3 & 4 W. 4, c. 42, allowing 20 years for recovery thereof. E. P.

Practice.

ABATEMENT OF ACTION. P. 80.

I think the action does not abate. See Impey's King's Bench Practice, tit. Abatement by Death, where it is laid down as the general rule, that "where the death of any party happens, and yet the plea is in the same condition as if such party were living, there such death makes no alteration or abatement of the writ."—In the case put by J. S. the plea will be in the same condition. SPES.

Property and Conveyancing.

DEVISE—EXECUTORY OR CONTINGENT. P. 80.

The devise mentioned by X. Y. Z. will give a contingent remainder to the eldest child living at Mary's decease, and a fine levied by her being an act of forfeiture, the contingent remainder will fail for want of a particular estate to support it. Fearn on Contingent Remainders, *passim*. SPES.

QUERIES.

Law of Property and Conveyancing.

ESTATE FOR LIFE.—FORFEITURE.

Land was conveyed to A. for life, remainder to his children in fee. A. committed an act of forfeiture after the birth of two children, and three have been born since. Do any of these children take the remainder, and which?

Land was conveyed to A. for life, with remainder to B. in fee in case he survived A. A. committed an act of forfeiture during his life estate. Is B.'s remainder defeated?

Land was conveyed to A. for life, with remainder to B. for life, remainder to C. in fee. A. committed an act of forfeiture during his life estate. Cannot the remainder-men now enter—i. e. by ejectment—first B., and in case of forfeiture by him, then C.? Q. O.

## TRESPASS.—COSTS.

*A.* brings his action against *B.* for trespass to his (*A.*'s) land. Immediately after writ served, and before declaration, the action was referred by Judge's order, and an award given in plaintiff's favor, for 5*s.* The title to the freehold did not, indeed could not possibly have come in question, defendant, *B.*, merely denying the trespass. Is *A.* entitled to his full costs of suit, or is this a case within the 22 & 23 Car. 2, c. 9? The case of *Peddel v. Kiddle*, 7 Durn. & East, 659, is greatly in *A.*'s favor, it is presumed.

A CONSTANT READER.

## PURCHASE.—MORTGAGEE.

*A.*, having applied to *B.* for a loan of money on mortgage, conveys the estate to *C.* in fee, in trust to sell in default of payment of the money, and to pay *B.* out of the proceeds. *C.* sells by auction. Can *B.* be considered the purchaser? and if so, why? O. P. Q.

## WILL.—DEBTS.—REAL ESTATE.

A testator, by his will, directed "that all his just debts, funeral and testamentary expenses, should be fully paid and satisfied." He died possessed of considerable real and personal estates, and owing considerably more than there was property to pay with (both simple contract and specialty debts). Do those words constitute a charge on his *real* as well as his personal estate, so as to render his real and personal estate equitable assets, to be administered upon the principle of equality? The testator died since the passing of the act 3 & 4 W. 4, c. 104. S. M. B.

## REAL PROPERTY.—WILL.

Does a will, attested by only two witnesses, and purporting to devise a freehold estate, and also disposing of the testator's personality, revoke a devise of the same estate contained in a prior will, attested by *three* witnesses? J. A. M.

## Common Law.

## BILL IN BLANK.

When a bill of exchange is indorsed in blank, it is stated in the authorities, viz. *Peacock v. Rhodes*, Doug. 633; *Frans v. Mott*, Doug. 612; and Byles, chap. Transfer, p. 84, that the effect of the *blank* indorsement is thereafter to make it payable to *bearer*. Can, therefore, an indorsee to whom the bill is indorsed, transfer it by *mere delivery* to a subsequent indorsee, so as to give such subsequent indorsee a right of action on the bill against the *drawer and acceptor* (I presume he cannot as against the first indorser, unless under certain circumstances); for at p. 87 of Byles, it is stated, if the *payee* of a bill payable to *order* neglect to indorse, the holder has no remedy against *any person but him from whom he received it*; and is there any difference between a bill and a note? R. E. S.

## HIRED HORSE.—DAMAGE.

*A.* hired a horse of *B.* for the day. *A.* threw the horse down; at least the horse fell by accident, and broke its knees. *A.* was coming home with the horse when a cart drove up against him and broke the chaise, so as to cost, for repairing, from 10*l.* to 15*l.* Is not *A.* liable to an action at the suit of *B.* for the damage done both to horse and chaise? U.

## ACCOMMODATION BILL.

*A.* accepts a bill for the accommodation of *B.*; the latter pays it away *bond fide* to *C.* *A.* and *B.* both become bankrupt. *C.* proves his debt under both flats. Can the assignees of *A.* prove under the estate of *B.* for the amount of dividends paid to *C.*? A SUBSCRIBER.

## TAXES.—OCCASIONAL SERVANT.

Are *occasional waiters* in private houses chargeable to the employer under any and which of the assessed tax acts, and in what duty? and does a single instance of such employment incur the liability? By stat. it seems the charge attached only in case the employment was *not less than six times* in a year. This is not continued in the present forms of return, and it is therefore supposed to be repealed—*sed quare*? J. A. M.

## THE EDITOR'S LETTER BOX.

We are obliged to "Richard Roe" for his suggestion, and shall attend to it in the next Supplement.

The hints we have received for the improvement of the Legal Almanack, will be adopted in the next edition; and the correction of the addresses of counsel shall receive careful attention.

The Queries and Answers of "Spes;" M. T.; "A Subscriber;" A.; C. R.; and S. J., have been received.

The letter of T. O. B. is under consideration.

We thank a correspondent for the advice he has taken the trouble to give us relative to some of the queries which have been inserted. Other correspondents differ from him in opinion. We accommodate all parties as well as we can, and will again reconsider the regulation by which we are guided.

We thank J. H. N. for his contribution, of which we hope soon to avail ourselves.

Subscribers may now complete their sets of the Analytical Digest of all reported Cases. The last part concluded the fourth volume. The first part of the fifth volume will be published about the middle of February.

# The Legal Observer.

Vol. IX. SATURDAY, JANUARY 24, 1835. No. CCXLIX.

———"Quod magis ad nos  
Pertinet, et ne scire malum est, agitainus.

HORAT.

## JUDICIAL CHARACTERS.

### No. XV.

#### MR. JUSTICE TAUNTON.

A vacancy has been made in the Court of King's Bench by the death of Mr. Justice Taunton, not the least eminent of that Court, always celebrated for the learning and ability of its Judges. It becomes our duty, therefore, shortly to state his legal career, and to sum up his judicial character.

The ordinary life of a successful lawyer is soon told; the means which insure his eminence—his industry and application to business—keep him usually from mixing much with the world, or taking an active part in any other than his professional pursuits, and this remark applies peculiarly to Mr. Justice Taunton.

William Elias Taunton was born at Oxford, in the year 1770, of which place his father was town clerk, and where he received his early education. At the usual period of life he was matriculated at the University of his native town, and became a member of Christ Church College. His academical career was distinguished. In 1793 he obtained the prize for the best prose composition on *Popularity*; and, altogether, left the University with great reputation for learning and talent, being soon afterwards elected a fellow of his college.

Having a bias in favour of the law as a profession, he applied himself to its study with zeal and industry. He entered his name at Lincoln's Inn in January 1794, and he was called to the bar in Easter Term, 1799. He soon after joined the Oxford Circuit, to which he united the

South Wales Circuit, which last he left on obtaining a silk gown. Here he laboured on in the arduous duties of his profession until he had obtained the rank of leader. His talents as an advocate were very considerable. He rose occasionally to eloquence, and was successful and imposing in his addresses to juries. His abilities as a speaker were backed by great legal knowledge, and he had long the reputation of a black-letter lawyer. Few men have retained their eminence on a circuit so long as Mr. Taunton, and withstood so successfully two generations of competitors. In consequence of his success on circuit he was elected Recorder of Oxford. His business in town, however, was never first rate. In due time he was created a Commissioner of Bankrupts; and in 1822, a King's Counsel, and was elected a Bench of Lincoln's Inn.

Mr. Taunton had been pointed out as a proper person for the bench for many years before his being created a Judge. In Michaelmas Term, 1830, and in his 60th year, he received this reward of his labours, being selected by Lord Lyndhurst, together with Mr. Alderson and Mr. Patteson, as the three additional Judges created under Sir James Scarlett's Act for the better Administration of Justice, 1 W. 4, c. 70. It has been said by his friends, that he would have been more distinguished as a Judge had he been appointed in the vigour of his life. Be that as it may, although not the most eminent of his brethren, he had many judicial qualities in a high degree. He was one of a race of lawyers now, we are afraid, fast disappearing, to whom most branches of legal learning were familiar. He always thought for himself, and sup-

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ported his own opinion with great learning. His charges to juries were straightforward and intelligible; and although his temper was never considered happy, he rarely allowed it to prejudice his view of a case. He was much liked in private, bearing under a rough exterior a warm and kindly heart.

He died suddenly, on the 11th inst., at his house in Russell Square, which was the one formerly occupied by Lord Tenterden, and in which the latter eminent Judge expired. He has left a widow and many personal friends to deplore his loss in his own circle, and the loss which the profession has sustained in his death is considerable.

## DECISIONS ON WRITS OF TRIAL.

ONE of the most important changes effected by the 3 & 4 W. 4, s. 42 (the Law Amendment Act), was that alteration in the practice which enabled the Courts to refer issues for trial to under-sheriffs and judges of inferior courts of record, where the amount claimed did not exceed the sum of 20*l*. The rules of Hilary Term, 4 W. 4, have supplied the forms necessary to be used in cases of proceedings under that act.

We shall in the present article present, in regular order, to the profession, the decisions pronounced by the Courts with respect to writs of trial.

It has been decided that the act only applies to cases of debts and pecuniary demands, and not to torts. *Watson v. Abbott*, 2 Dowl. Prac. Cas. 215. Although the act itself only speaks of "sheriff," as the person to whom the writ of trial is to be directed, if the issue is to be tried by the judge of an inferior court of record, it ought to be directed to the "judge" of that Court. *Clark v. Marnier*, *Ib.* 774. And where the trial took place before the deputy of a mayor, and it was not shewn that he had not power to appoint a deputy, the Court refused to set aside the proceedings. *Ib.*

Whether the undersheriff has power to postpone a cause which has been referred to him by a writ of trial, has not been determined. It should seem, however, that he has not such a power, seeing that the writ is returnable on a day certain. Where it should become necessary to postpone the trial of the issue, it should seem that the application ought rather to be made to a Judge of the Court issuing the writ. See *Packham v. Newman*, 3 Dowl. Prac. Cas. 165.

The defendant may move for judgment as in case of a nonsuit, as well where the issue is directed to be tried before the sheriff, as where it comes on at the sittings; but it is too soon to move in the same term in which the default is, and where it does not appear that the notice of trial was countermanded. *Begbie v. Grenville*, 2 Dowl. Prac. Cas. 238; *Walls v. Redmayne*, *Ib.* 508. If a plaintiff does not proceed within two terms after issue is joined, which issue is directed to be tried before the sheriff, pursuant to the statute, the defendant is entitled to judgment as in case of a nonsuit, as in ordinary cases. *Horwood v. Roberts*, 2 Dowl. Prac. Cas. 534. And where a plaintiff obtains an order under the 3 & 4 W. 4, c. 42, s. 17, for the trial of an issue before the sheriff, the Court will compel him to proceed within a reasonable time. *Mullins v. Bishop*, *Ib.* 537. Where issue was joined in a country cause before the sheriff in June, and no notice of trial was given, the Court of Exchequer held, that a motion for judgment as in case of a nonsuit in Michaelmas term, was too early, though two court-days had passed. *Butterworth v. Crabtree*, 3 Dowl. Prac. Cas. 184. Where a plaintiff does not proceed to the trial of an issue before the undersheriff, pursuant to notice, the time at which he would be compelled to proceed will be regulated by the times at which the sheriff sits. *Banks v. Wright*, *Ib.* 14.

With respect to the power which the sheriff or his deputy has on the trial of such an issue, it appears by the case of *Watson v. Abbott*, 2 Dowl. Prac. Cas. 215, that he may, if he thinks right, nonsuit the plaintiff.

Should the jury, on the trial of such an issue, find a verdict for more than 20*l*., the verdict so far will be bad; and therefore where the jury gave a verdict for 20*l*. and 10*s*. interest, the Court held that it was bad as to the 10*s*. *Burleigh v. Kingdom*, *Ib.* 351.

In the case of a motion for a new trial, the Courts determined at first that such motions might be made either on an affidavit of the facts appearing at the trial, or on the undersheriff's notes, verified by affidavit. *Johnson v. Wells*, *Ib.* 352. But since that case it has been determined, that the proper course is to have the notes of the presiding officer verified by affidavit, without affidavits of the facts. *Grainge v. Shoppe*, *Ib.* 644. It was however said, in *Johnson v. Wells*, *Ib.* 352, that the Court would not

pay the same regard to the notes of the undersheriff as to a judge's notes of a trial.

It has been held, that the rule of the Courts, as to not granting a new trial where the amount is under 20*l.*, except for misdirection of the Judge, does not apply to trials before the sheriff. *Edwards v. Dignam*, *Ib.* 642; *Henning v. Samuel*, *Ib.* 766. But the absence of a witness is no ground for a new trial, and application ought to be made to postpone the trial. *Edwards v. Dignam*, *Ib.* 642. And the Court will allow further time to make a motion for a new trial, if the undersheriff does not furnish his notes of the trial in proper time. *Thomas v. Edwards*, *Ib.* 664.

As the provisions of the 1 W. 4, c. 7, ss. 2 & 4, were extended to proceedings on issues to be tried before the sheriff, the Court will, in the next term after the trial, entertain a motion to vacate and arrest a judgment signed in vacation; *Pyke v. Glendinning*, *Ib.* 611; but where the plaintiff, having obtained a verdict, got his costs taxed, and signed judgment on the same day, the Court was of opinion, upon the construction of s. 18 of the 3 & 4 W. 4, c. 42, that the judgment was regular. *Nicholls v. Chambers*, *Ib.* 693.

If an undersheriff refuses to transmit his notes, taken on the trial of an issue, the Court will compel him to pay the costs consequent on his refusal. *Metcalf v. Parry*, *Ib.* 519; and vol. 3, p. 93.

## LAW OF ATTORNEYS.

### No. XXVI.

#### INSTITUTING A SUIT WITHOUT AUTHORITY.

A solicitor should never fail to take a written authority from his client for the institution of a suit; but the following case determines that this is not absolutely necessary.

This was an application on behalf of a person of the name of *Lord*, that his name might be struck out, as one of the plaintiffs in the bill, and that his costs might be paid by his solicitor personally, as having instituted the suit without due authority.

Mr. *Pepys* and Mr. *Walker*, for the motion, contended, that as the affidavit of the plaintiff positively denied that he had ever given the solicitor any specific instructions to file the bill, it was unnecessary to enter into an examination of the facts sworn to on behalf of the solicitor, and which, it would be argued, amounted to a sufficient verbal authority. It was the duty of the solicitor, acting upon the rule to be deduced from the language of Lord *Eldon* in *Wilson v. Wilson*, 1 J. & W.

457, and *Wright v. Castle*, 3 Mer. 12, to have protected himself, by obtaining from his client an authority in writing; and as he had not done so in the present instance, he must take the consequences.

Sir *E. Sugden*, *contrà*, insisted that the construction attempted to be put upon Lord *Eldon's* dictum was unreasonable in itself, and would, if adopted, be an encouragement to the grossest fraud and injustice.

The Lord Chancellor said, it was true that a solicitor must, for the purpose of instituting a suit, receive specific authority from his client; but it had never been decided that such authority might not be by parol. The rule now contended for,—that wherever the plaintiff denied the fact of the retainer, the solicitor was bound to produce an authority in writing,—was not a fair inference from the language of Lord *Eldon*; much less was it established by the cases referred to. It would be necessary for him, therefore, to go into the affidavits. The Lord Chancellor afterwards stated that he adhered to the opinion he had already expressed; that the authority for filing a bill might be by parol as well as in writing; and that, in the former case, it might be proved by circumstances, and by the subsequent conduct of the party. The circumstances, however, which were disclosed on these affidavits did not, on the whole, appear to establish a sufficient authority in the present instance; and the application of the plaintiff must therefore be granted.

In the cases of *Wisrould v. Goetze* and *Simpson v. Jones*, which came on for argument a few days afterwards, upon motions involving the same question, respecting the sufficiency of the retainer given by the plaintiffs, the Lord Chancellor recognized and acted upon the principles previously laid down in this case.

*Lord v. Kellett*, 2 Myl. & K. 1.

## ON THE ABUSE OF PRIVILEGE OF PARLIAMENT.

### To the Editor of the Legal Observer.

Sir,

In these days of reformation, it seems strange that the defective state of the law, as regards the privilege of Members of Parliament, should have been so long overlooked.

According to the present practice, no member of parliament can be arrested during the sessions, or until a convenient time after prorogation or dissolution. What a convenient time is, and the construction to be placed on the word "convenient," has never been definitely settled, either by the Commons themselves, or by any of the learned Judges before whom the subject has, at different times, been mooted.

The great convenience of this law to those who have a desire to victimize the man of trade, has long been admitted. The bare-faced abuse of it has also been equally as palpable; and

the only path left to a tradesman to pursue, in order to retain his goods in his possession, appears to be, not to part with them to any individual having the once honourable appendage of "M. P." to his name, without in the first place receiving the hard cash.

In the case of *Holiday v. Pitt*, 2 Strange's Rep. p. 985, the extent of the privilege of a member was fully discussed before all the Judges,—the end of which was, that the defendant was discharged on motion, on the ground of having been arrested within but a few days after the dissolution of parliament, and a convenient time not having been allowed to the defendant to prepare himself for his next election.

The object of these few remarks is, to endeavour to shew the necessity of some definite rule being made on the subject. That the privilege of a member of parliament, or any other public functionary, when not abused, should be held sacred, I for a moment would not attempt to deny; but when those privileges are made use of, not for the protection of the member, and to ensure his punctual attendance on any great public question, but for the purpose of incurring debts which the party has not the means or intention of paying,—in that case, I feel convinced, all men of business and respectable practitioners cannot but desire an amendment of the law.

The Peers have held themselves entitled to twenty days' extension of privilege only after a prorogation; but the Commons appear to consider themselves entitled to forty, both after prorogation and before the commencement of the ensuing session,—well knowing that it is a sufficient time to keep their bodies in their own possession.

It surely never could have been intended by the legislature to pass any act or frame any law, whereby a creditor *may*, if desired by his debtor, be cheated with impunity; for even though a civil action be commenced, and a judgment obtained, how many privileged persons have not goods in any part of the kingdom to the amount of five pounds, or in some instances, not as many pence, but either reside at hotels, clubs, or furnished lodgings? And though, perhaps, by taking the body of a debtor in execution, some part of a debt may be paid, in the case of a member of parliament it is held illegal, and the last resource of a creditor is rendered of no avail.

The effect of this law must clearly prove the pernicious tendency it has to destroy partially the social system; for it is an indisputable fact, that numbers of tradesmen are ruined in London and its vicinity, and fall the victims of the unprincipled, who, under this cloak, can deprive them for a time of their just demands; and, in consequence of being unable to meet their engagements, insolvency frequently ensues, and ruin too often follows.

And though perhaps we may not travel 100 miles from the Metropolitan boroughs to find members who belong to the tribe of "Never-pays," it is useless, within the limits of a letter, to further enlarge upon it; and I feel

convinced that the importance of the subject will apologize for my having so lengthily encroached on your valuable time, and that the publicity of these few remarks will cause it to be noticed in the proper quarter.

J. W. D.

*Clement's Inn.*

## SELECTIONS FROM CORRESPONDENCE.

No. XC.

### SURCHARGE FOR TAXES.

*To the Editor of the Legal Observer.*

Sir,

In the year 1833, I was surcharged by the surveyor of assessed taxes, for a man servant, and I appealed. The commissioners decided that I was bound to pay. I demanded a case for the opinion of the Judges. The case was agreed on, and *six Judges* have lately written on it that they consider the decision of the commissioners to be right. This, most people would think, should be satisfactory to me. I however still think the commissioners were wrong. I had made up my mind before I demanded the case, and the decision of the Judges has not removed my impression, because I do not know the grounds on which it is founded.

I send you a copy of the case, in order that you may make use of it, if you think proper. I should think that two-thirds of the solicitors in London, and nearly every barrister, must have been similarly circumstanced with myself.

Before I approved of the case, I enquired what acts of parliament were relied on in support of the surveyor's power to surcharge, and was referred to 43 Geo. 3. c. 16, ss. 27, 28, and 63, and 50 Geo. 3. c. 105, Rule 2.

### THE APPELLANT.

The following is the statement of the case:

*A. B.* appealed against a supplementary charge made on him by the surveyor, for the duty on a male servant under the 52 G. 3. c. 93, sched. C., No. 1, for the year 1833, ending 5th April, 1834.

The appellant stated that the person in respect of whom he had been charged with the duty on a male servant, lived with him in the capacity of clerk and servant.

That the period in respect of which the charge was made, was for the year 1832-3.

That in making the return complained of, the appellant, in conformity with his usual practice, and assuming that he was not bound to pay for the same person twice over—as a clerk, and also as a servant—returned the person in question as a clerk only, the duty on a clerk being higher than that upon a servant.

That the return was made after the 5th of April 1833, and the appellant was assessed upon it.

That after the return was made, and after

the assessment made thereon, *viz.* on the 14th day of August, 1833, an act was passed, repealing the duty on clerks, in respect of all assessments, commencing from and after the 5th April, 1833.

That the surcharge was made after the act repealing the duty on clerks was passed.

The appellant contended that the return made by him was correct at the time it was made; for, inasmuch as he was not liable to duty in respect of the same person—both as a clerk and as a servant—it was not necessary that he should in his return state the person in question to be clerk and servant; it was sufficient that he should be returned in that capacity to which the highest rate of duty attached; that the acts of parliament which authorize the surveyors to surcharge, authorize them so to do only where the return made is not a compliance with the act of parliament; and that although in future the appellant would be bound to return the person in question as a servant (the duty having been taken off clerks), yet that on this occasion the return made was correct, and that therefore the surveyor had no power to surcharge.

The surveyor, on the other hand, insisted that the surcharge was right, as the person in question had been employed in a domestic capacity; and the commissioners having decided in favour of the surveyor, this case has been stated at the request of the appellant.

#### LIABILITY OF LANDLORDS FOR TAXES.

Sir,

The inquiry of "J. A. M." in your last number, is exceedingly interesting to landlords, who are often, in point of fact, compelled to pay taxes left undischarged by their tenants. It is a great grievance; and since, for the most part, it arises out of the neglect of the collectors, it is worthy of consideration whether, if the landlord be constrained by law to pay such arrears, there is not some remedy against the collector, by indictment or action, or by application to the commissioners for the affairs of taxes, for his removal from his office.

As I do not wish to fill your columns with long quotations from acts of parliament, I merely refer your correspondent to the case of *Juson v. Dixon*, 1 Maule & Sel. 601, which will give him a very good view of the enactments relating to the question put by him. That was a strong case, although differing from that put by your correspondent.

The chief, perhaps the *only* ground (if indeed there be any,) for exempting from arrears of assessed taxes, goods found on the premises after a change of occupancy, must be sought in the 43 G. 3, c. 99, and the 43 G. 3, c. 161. Provisions are made in those statutes—(see in particular ss. 43 & 44 of 43 G. 3, c. 99, and ss. 23, 51 and 56, of 43 G. 3, c. 161)—for compelling the collector to demand the taxes, and to obtain payment; and for charging upon the parish what, after due exertion, he shall not be able to obtain; and for making persons responsible for the taxes left unpaid by them when they remove to other places. It

strikes me that these provisions were made, not merely in order to secure the due collection of the revenue, but also in case of the subject; or, at any rate, in order to make the collectors liable to indictment, or action, or removal, in case of neglect in the discharge of their duties.

It may perhaps be open to question, whether the 33d and 38th sections of the 43 G. 3, c. 99, apply to the case put by your correspondent, and I know of none others which do. By the common law, the landlord could not distrain after the determination of his tenant's lease; and he can only do so now under stat. 8 Anne, c. 14, ss. 6 & 7: by which, however, the conditions are required, "that the distress be made within six calendar months after the determination of the lease, and during the continuance of the landlord's title or interest, and also during the possession of the tenant." Now it would be difficult to apply to collectors of taxes this contingent right of distress given to the landlord; since, in respect of *some*, at least, of the conditions, there can be no analogy between the two parties; but if such application can be made, at any rate it would seem that the conditions should, as far as possible, be complied with in the case of the collector, as well as in that of the landlord.

A.

#### ABSTRACTS OF RECENT STATUTES.

##### AN ACT TO AMEND THE TURNPIKE ACTS. 4 & 5 W. 4, c. 81.

The act recites that by the 3 G. 4, c. 126. s. 12. it is enacted, that for regulating the weights to be allowed to waggons, wains, carts, and other carriages, the weights therein particularly specified and regulated according to the width and number of the wheels of such carriages shall be allowed to every waggon, wain, cart, or other such carriage; and by s. 13, that to every caravan or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following; (that is to say,) for every such carriage three tons and fifteen hundred weight in winter, and four tons five hundred weight in summer: and that doubts have arisen whether the said last-recited provision extends to waggons, wains, and other such wheeled carriages when built and constructed with springs, although such waggons, wains, and other four-wheeled carriages, if not on springs, would be comprehended within the said first-recited provision, and it enacts, that the said last-recited provision shall not be deemed or construed to extend to waggons, wains, or other four-wheeled carriages having the felines of the wheels thereof of the breadth of not less than four inches and a half at the bottom or soles thereof, notwithstanding the same may be built and constructed with springs; any thing in the said recited act or any other act to the contrary notwithstanding.



PRACTICAL POINTS  
OF GENERAL INTEREST.  
No. LXXII.

FRAUDULENT ASSIGNMENT UNDER 6 G. 4,  
c. 16, s. 3.

The question raised in the following case was, whether a sale of the whole of a trader's property was of itself an act of bankruptcy. It seems it was decided that it was not in the case of *Rose v. Haycock*, 1 Adol. & Ellis, 466, n.; but the question has been recently elaborately discussed, and so determined by the Court of King's Bench.

The question is, said *Denman*, C. J., whether an assignment by a trader of his whole stock, with intent to abscond and carry off the purchase-money, is an act of bankruptcy, as "a fraudulent transfer and delivery of his property, with intent to defeat and delay his creditors," when the purchaser pays a fair price for the goods, and is ignorant of the trader's design? The case being new, I thought myself bound to adhere to the words of the act; and considering that all acts of bankruptcy are made to depend on the conduct and motives of the bankrupt alone, and that, in one sense, his sale of property to the defendant was clearly fraudulent, I directed the jury to find a verdict for the plaintiff, with leave to move for a nonsuit. The case has now been fully argued before us, and my first impression was rather fortified than weakened by a scrutiny of the older cases,—in which Lord *Mansfield*, and other contemporary Judges of high authority, appear to have held, that the mere assignment of a trader's whole property by deed was an act of bankruptcy, as disabling him from further carrying on his trade, though for a good consideration, and even with the praiseworthy motive of fairly distributing it among his creditors. It is enough to allude generally to *Worsley v. Demattos*, 1 Burr. 467; *Compton v. Bedford*, 1 W. Bl. 362; *Law v. Skinner*, 2 W. Bl. 996; *Devon v. Watts*, 1 Doug. 86; *Hassells v. Simpson*, 1 Doug. 89, n. *Butcher v. Easte*, 1 Doug. 295. On fuller consideration, I am satisfied my first impression was wrong, and agree with the opinion which has been formed by the rest of the Court. If the language of the clause is construed with strictness, it is not the transfer and delivery of the goods that can be called fraudulent, in any sense. The trader is bound to deliver the goods he has sold for valuable consideration, receiving in return for them a fund of equal value, which might be made available for the benefit of his creditors. Possibly the best thing for them would be the conversion of goods into money. It is remarkable that the word "sale" does not occur in this clause; and equally so, that none of the older cases turn on a sale accompanied with payment of the full price. Again, the Court held, in *Hill v. Farnell*, 9 B. & C. 45, that where a part of the property had been sold by a trader after an act

of bankruptcy, but *bond fide* bought, the purchaser could not be compelled to part with the goods, unless the assignees at least tendered the price paid. It was there justly said, that the protecting words of the 82d section could not otherwise receive their full effect. The incongruity would, indeed, be monstrous, if the purchaser were to be at liberty to keep goods so obtained, but should be disabled from even recovering a dividend on the price he had *bond fide* paid, if no previous act of bankruptcy had been committed. Another great inconvenience was forcibly pointed out: as the transfer and delivery of any part of the property may be by the statute an act of bankruptcy, a trader carrying on business in the ordinary way, might be made a bankrupt by a regular sale in his shop, by proof subsequently obtained that he had a scheme for cheating his creditors of the money; and in that case the unfortunate purchaser must both yield up to the assignees the article bought, and lose his right of proving under the commission. These startling consequences, which would, perhaps, warrant some degree of violence to the wording of the law, will be avoided by confining the epithet "fraudulent" to the gift, transfer, or delivery of goods, and not extending it to the projects which possibly the trader may entertain, as to the disposal of the purchase money.

Whatever authority exists on the subject, coincides with this view. Mr. *Pollock* informed us of a case decided at *nisi prius* by Baron *Hullock* in 1827, where the mere fact of selling the whole stock in trade was held to be no act of bankruptcy, without proof of fraud. That learned Judge nonsuited the assignees; and Mr. *Adolphus* has furnished a note of the refusal by this Court to set aside the nonsuit. In *Cook v. Caldecott*, M. & M. 522, Lord *Tenterden* left it substantially to the jury to say, whether the purchaser was aware of the trader's intention to defraud his creditors of the money raised by sale of portions of his stock in trade. *Hill v. Farnell*, 9 B. & C. 45, points the same way, and supplies the powerful argument to which allusion has been made; and the *Master of the Rolls* recently decided the case of *Robinson v. Carrington*, 1 Mont. & A. 1, on the same principles. For these reasons we are of opinion that the sale of a tradesman's stock to a *bond fide* purchaser, who pays the fair price of it, in ignorance of any fraudulent intention, to the seller, is no act of bankruptcy. The rule for entering a nonsuit must be absolute. *Baxter v. Pritchard*, 1 Adol. & Ellis, 456.

GUARDIANSHIP OF A FATHER  
OVER HIS CHILDREN.

So much discussion has taken place with respect to the origin of the power which the Court of Chancery exercises over the persons and fortunes of infants, (see Co. Litt. 128, n.; 2 Fonbl. Eq. 226, n. (a); and 1 Mad. Chan. Prac. 336,) that it may not be amiss to give Lord *Eldon's* opinion thereon, which was in

the following words:—"It has been questioned whether this jurisdiction was given to this Court upon the destruction of the Court of Wards, (which, however, it is impossible to say could have been the case, when we recollect the nature of the jurisdiction,) or whether it is to be referred to circumstances and principles of a different nature; more especially, whether it belongs to the King, as *parens patriæ*, having the care of those who are not able to take care of themselves, and is founded on the obvious necessity that the law should place somewhere the care of individuals who cannot take care of themselves, particularly in cases where it is clear that some care should be thrown round them. With respect to the doctrine that this authority belongs to the King, as *parens patriæ*, exercising jurisdiction by this Court, it has been observed at the bar that the Court has not exercised that jurisdiction unless where there was property belonging to the infant to be taken care of in this Court. Now whether that be an accurate view of the law or not; whether it is founded on what Lord Hardwicke says in the case of *Butler v. Freeman*, Amb. 303, 'that there must be a suit depending relative to the infant or his estate' (applying, however, the latter words rather to what the Court is to do with respect to the maintenance of infants); or whether it arises out of a necessity of another kind, viz. that the Court must have property in order to exercise this jurisdiction;—that is a question to which, perhaps, sufficient consideration has not been given. If any one will turn his mind attentively to the subject, he must see that this Court has not the means of acting, except where it has property to act upon. It is not, however, from any want of jurisdiction that it does not act, but from a want of means to exercise its jurisdiction, because the Court cannot take upon itself the maintenance of all the children in the kingdom. It can exercise this jurisdiction usefully and practically only, where it has the means of doing so; that is to say, by its having the means of applying property for the use and maintenance of the infants." 2 Russ. 20, 21.

That the jurisdiction exists is sufficient for our position; and the present inquiry is, under what circumstances that jurisdiction is interposed between the natural guardian and the infant. The law makes the father the guardian of his children by nature and by nurture, and he is empowered by act of parliament to appoint a testamentary guardian; that the father, however, is within the jurisdiction, was impliedly admitted so long back as one hundred years, appears from the remark of Lord Macclesfield in *The Duke of Beaufort v. Berty*, 1 P. W. 703, "I will not place the state guardian in a situation more free from the jurisdiction of this Court than the father is in." In *Powell v. Cleaver*, 2 B. C. C. 499, Lord Thurlow refused to allow counsel to argue on the jurisdiction; 2 Russ. 22; and also in *Creuse v. Hunter*, 2 Cox, 242, and Jac. 250, n.; *De Manneville v. De Manneville*, 10 Ves. 52, by Lord Eldon.

This is a jurisdiction exercised with great delicacy, as involving family disputes, and in most cases it has been thought expedient that matters of this kind should be heard in private. It seems settled at the present day, that the Court will not interfere on the mere grounds of irreligion in the father. Lord Bathurst made an order to prevent a Protestant child from being sent to a Roman Catholic school; 2 B. C. C. 510; 2 Russ. 28; but *per Lord Eldon*, "This Court, with reference to the distinction between Protestants and Catholics, interfered *then* in the education of children in many cases in which it would not interfere *now* (and see also Jac. Reports, 253, 256, 260, 262), except so far as the law of the country calls the Courts to look upon some religious opinions as dangerous to society, such as opinions expressed by aliens having a strong connexion with their political principles, leading to acts against which these laws as to aliens were directly levelled. 10 Ves. 61, 2. But when general immoral conduct is connected with irreligion, the Court will then restrain the father's right of educating or living along with his children.—Shelley, the intimate friend of Lord Byron, at the age of nineteen, wrote a work in defence of Atheism, and at twenty-five maintained the same opinions, and being also separated from his wife, had since unlawfully colabited with another woman: on these grounds the Court controlled his authority over his children. *Shelley v. Westbrooke*, Jac. 266. In *Wellesley v. Duke of Beaufort*, 2 Russ. 1; 1 Dow. N. S. 154; S. C. 2 Bligh, N. S. 124; Mr. Wellesley, even in his wife's lifetime, had been living openly in adultery with a Mrs. Bligh, and this connexion was carried on after his wife's death, and the father was shewn to be of general dissolute habits, and conducted himself towards his children in a most immoral way, teaching them (even the daughters) indecent words, and to swear. The Court restrained him from interfering in their education; and Lord Eldon remarked—"The system of adultery has been carried on in the most shameless manner, and that it had been carried on in a manner so disgraceful to Mrs. Bligh, that I do declare that I ought to be hunted out of society if I hesitated for one moment to say, that I would sooner forfeit my life than permit the girl to go into the company of such a woman, or into the care and protection of a man who had the slightest connexion with that woman." A case is mentioned in 10 Ves. 61, 2, in which the Court interfered, of constant habits of drunkenness and blasphemy. These appear to be the only decisive cases in which the Court has acted upon the conduct of the father.

Another ground on which the Court interferes is, where a third party takes upon himself the education of infants, and also leaves them a sum of money, and gives the father a benefit under the same will, with a condition that the father shall forfeit his benefit in case he interferes in the guardianship. This can scarcely be called an interference on the part of the Court, on this particular head, as it amounts to no more than

any other gift to which is attached a condition, on the breach of which the party taking the benefit is to forfeit his advantage;—as, however it enables a party (whose children may marry against his consent) to provide a maintenance for the children of such children, independent of the erring parent, I may as well notice the different cases on this head.—*Powell & Cleaver*, 2 Bro. C. C. 499, cannot be entirely relied on as a case of condition, as in that case the father had assented, for some time, to the trustees acting as guardians, and the condition was attached to the gift in favour of the children, in case of their being educated under the care of a third party; and, independent of the gift to the father, the Court would, I think, have inquired, whether the father was right in withholding from his children a benefit held out by a third party. It may, perhaps, be considered in a doubtful light, as a case of assent and election, but not as deciding how the Court would act, if it was a conditional bounty, and the giver had not previously done for the children what the father was unable to do. In *Colston v. Morris*, before Sir J. Leach, in 1819, S. C. in Jac. 257, n. a benefit was given to the father, on condition of not interfering in the guardianship of the infants,—and the decree was an alternative, either to give security against interfering, or forfeit the benefit. In Jac. 257, Lord Eldon is represented as saying, “I find that the authorities have gone further than I thought they had. There were, I believe, some cases in Lord Northington’s time, in which he considered that the Court would reserve a power over a father, not only if he accepts a bounty given to himself, but if he avails himself of a bounty given for the maintenance of his children, which he must otherwise have provided at his own expense.” What these cases were does not appear, nor have I been able to find any such, nor does Lord Eldon appear to lay much stress upon them, and the later cases are opposed to them. In *Westmeath v. Westmeath*, Jac. 251, n. where, although the father had covenanted to leave the education and care of the infants to the mother, and there was a fund for such purpose, still the Court, on petition, ordered the infants to be given up to the charge of their father. What was Lord Eldon’s opinion will appear in the statement of the next class of cases, viz. where the father has given his consent to a third party, acting as guardian to his children, in which case the Court will interfere and restrain his rights. On this Lord Eldon remarks, “Nobody can doubt that if I give a provision to your child, it does not give me or any one else a right to control your care of her: not at all;—but on the other hand, if, when she was young, I was to give her a considerable maintenance during her infancy, which you could not have supplied, and a large fortune afterwards, and you, the father, permit her to take the advantage of that education which could not have been afforded but through my gift, could you afterwards stop short, and say that she should no longer have that advantage? Under such circumstances the Court would inquire what was most for her benefit?”

On the above principle of assent on the father’s part, Lord Eldon decided, the father had waived his natural right. *Lyons v. Blenkin*, Jac. 245. On the same principle Lord Hardwicke decided the case of *Blake v. Leigh*, Amb. 306. There is also another case coming under this head, but which has been cited by some authors as a case coming under the first branch of the subject, viz. the misconduct, or, as in this case, the insolvency of the father. The case is *Welcock v. Druke*, 2 Dick. 631. It appears, however, on reference to the Registrar’s book (see Jac. 250, n.), that the decree was made *by consent*, which entirely alters the feature of the case. One more case is worthy of note, *Jackson v. Hankey*, Jac. 264, n., in which the wife, having a separate property, and being separated from the husband, who had little means of keeping the children, applied to the Court to have them under her own care, offering to provide for their maintenance out of her own property. On this part of the case Lord Eldon said, “that there were cases where, without any provision antecedently made, the Court would remove a child from the parent (alluding to *Shelley v. Westbrook*, *ut supra*, and the other cases). But wherever the Court had interfered against the father upon pecuniary considerations, they had been *solid considerations*, not merely expectations. In all the cases which his Lordship remembered, there had been some immediate irrevocable provision by which the child could be brought up in a manner suitable to its future property.” The application was refused, without prejudice to any other application, in case of any other permanent provision being made for the infants. Some private arrangement must afterwards have taken place, as the father obtained leave to take the infants abroad with him. The following case gave rise to the above remarks:—A child, of some degree of talent, was taken from the father (who was in indigent circumstances) with his assent, and placed under the care of two persons for the purpose of being educated, they covenanting so to do, and the father covenanting not to interfere with such education, or with any profits the child might derive through such education, during its minority. A slight consideration was given to the father on the execution of the deed; and several years being spent by the child with the trustees, for the purpose of its education, and they thereby incurring a considerable expense—the question was, whether the father could now claim the charge of the child, it deriving a considerable income in consequence of the education given?—That the Court acts with boldness against a party acting in opposition to such decrees, will be in the recollection of all, in the case of Mr. Wellesley, whom the Court committed to the Fleet, in defiance of his being a Member of Parliament, and the House of Commons admitted such right.

T. O. B.

## RE-ADMISSIONS OF ATTORNEYS,

For the last day of this Term, Jan. 31, 1835.

## King's Bench.

Armytage, Benjamin Green, late of Sarah Street, Leonard Street, Shoreditch; now of Stratford, Essex.  
Bridgman, John Vickry, 10, Great Charlotte Street, Blackfriars.  
Capes, George, Crowle, Lincolnshire.  
Coombe, William Alexander, 44, St. George's Terrace, Milton, near Gravesend.  
Driver, William, late of No. 11, Union Court, Broad Street; now of 17, Britannia Row, Middlesex.  
Drummond, Hugh M., late 50, Lincoln's Inn Fields; now 20, Grafton Street, Fitzroy Square.  
Elkington, Charles, late of 45, Commercial Sale Rooms, Mincing Lane; now of 298, Strand.  
Fisher, John Cambridge, late of Cheltenham, now of Ball's Pond.  
Foot, Jonas, Devonport, Devon.  
Hopkinson, William, Swansea, Glamorgan.  
Houghton, Thomas, Liverpool.  
Howard, Edward John, formerly of 8, Duke Street, St. James's Square; now of 65, Stafford Place, Pimlico.  
Lampard, Thomas, late of Commercial Chambers, Fenchurch Street; now of 4, Clement's Inn.  
Lewis, Thomas Plomer, Hitchin, Hertford.  
Lord, Thomas, late of South Square; but now of London Road, Brighton, Sussex.  
Milburn, George William Alexander, late of Milman Street; now of No. 11, Warwick Court, Holborn.  
Parker, Richard, Towester, Northampton.  
Paterson, Wm. Simpson, 7, Bouverie Street.  
Plumbe, James Stuart, Liverpool.  
Quarles, William, late of No. 17, Clement's Inn; now of Brompton, Kent.  
Roberson, Thomas, Oxford.  
Roberts, Henry Taylor, late of 83, Cannon Street; now of 41, Little Queen Street, Lincoln's Inn Fields.  
Scholis, Robert Walter, late of Manchester; now of Woolwich.  
Skinner, John, late of Sussex Place, Southwark Bridge; now of Thomas Street, Waterloo Road, Surrey.  
Stringer, Samuel, Lant Street, Southwark.  
Taylor, William, late of King Street, London; now of 16, Tokenhouse Yard.  
Turner, John, Middlewich, Chester.  
Weller, John Sawyer, late of Cheltenham; now of Mayfield, Sussex.  
Wheeler, Thomas, Fulham Lane, Hammer-smith.

## Common Pleas.

Partridge, John Charles, late of Nicholas Lane, Lombard Street; now of New Dover Road, Surrey.

## SUPERIOR COURTS.

## Vice Chancellor's Court.

## CHARITY.—BEQUEST TO POOR RELATIONS.

*A bequest for the maintenance and education of poor relations, to be administered from time to time; is in the nature of a charity, and to be established as such.*

This was an information filed by the Attorney General, for establishing a charity under the will of a British merchant of the name of Lovelace, who died in Malaga, in Spain, leaving considerable property there, and in England. By his will, he gave all his property to two friends, of the name of Ward, directing them to collect it, and invest it in the British funds in their names, upon trust: first, to pay debts and particular legacies, and then to apply the remainder in the best way they could, "towards the maintenance and education of such poor youths as should be related to him, but not for any that should not be in indigent circumstances, it being his intention that the necessitous only should be relieved; and should any poor female relative happen to marry, and there should be an excess of income of his property above the provision aforesaid, then that 50*l.* or 100*l.* be given to her, according to her necessities; but it should be without interfering with the education of the youths, and should, rather than so interfere, be withheld, until a sufficient income should have arisen for the purpose." The testator also directed a loan from the capital, not exceeding 500*l.* at any time, to be given at the discretion of the trustees, for the advancement of any youth. Upon the hearing, the usual reference was made to the master; and he by his report found that there were six next of kin, and thirty other relations of the testator. All of these became parties interested in the suit; and the cause now coming on for further directions—

Sir *W. Horne* and Mr. *Lynch*, on behalf of the crown, submitted, that this was a charitable bequest. The property was not given for immediate distribution, but to be established as a fund, to be administered from time to time. The words of the will shewed that to be the testator's intention, and the case of the *Attorney General v. Price*,<sup>a</sup> was directly applicable. There it was held, that a bequest to trustees, with a direction, that they should yearly, for ever, distribute at their discretion among the testator's poor kinsmen and kinswomen, and their offspring, dwelling within a certain county, 20*l.* by the year; was in the nature of a charitable bequest.

Sir *Edward Sugden*, on behalf of the next of kin, denied the applicability of the cases cited. It was a refined distinction to hold, that a bequest to *relations* should be confined to persons within the degree of kindred nam-

<sup>a</sup> 17 Ves. 371. See also the cases there referred to.

ed in the Statute of Distributions; but that a bequest to *poor relations* should be extended beyond that class; this would be giving too much effect to the prefix *poor*, which was held in a case in Peere Williams, to be a mere term of endearment, as it was most commonly used, and in that case it was applied to a countess.

Mr. *Treslove* appeared for the other relations, all of whom were interested in the immediate distribution of the bequest.

His Honour, the *Vice Chancellor*, said, he had been counsel in the case of the *Attorney General v. Price*, and remembered it well. The question there was only conformable to the law long before established; the principle was, that where a testator intends a distribution to all times, of a fund of an eleemosynary nature, to a class of persons, the bequest is in the nature of a charity. Let it be referred to the master, to draw up a scheme for this charity.

*Attorney General v. Lovelace and others*, Michaelmas Term, 1834.

#### COSTS.—EMPLOYING AN ACCOUNTANT.

*Circumstances in which this Court will depart from the general course of practice, and will charge with the costs of an accountant, the parties by whose conduct his agency became necessary.*

John Thomson died intestate, leaving considerable personal property, and his mother and two sisters him surviving. The mother, who was above eighty years of age, and consequently of infirm mind, obtained letters of administration of the intestate's estate. One of the sisters filed this bill for a due administration of the intestate's estate, and the usual decree of reference to the Master, was made on the hearing. The Master in taking the accounts under that decree, discovered numerous alterations and erasures in the books of accounts produced by the administratrix, from which also some pages were wholly abstracted. In pursuing his inquiries, he found that several sums of money were received by the administratrix, but not accounted for by her in her answer to the bill, although that answer was put in subsequent to the receipts. The plaintiffs, on this discovery, employed an accountant to investigate the accounts, and through his agency several concealments and frauds were discovered. The Master embodied all these facts in his report, and they were set forth among others in the petition of the plaintiffs, by which they prayed for an appointment of a receiver to the estate; for the payment into Court of all money belonging to the estate in the hands of the administratrix; for liberty to examine the defendants *visa voce* to the accounts; and lastly, for an order on the administratrix and her other daughter, to pay the costs of the accountant, and of this petition, out of their shares of the estate. This last part of the prayer was the only question now made for the consideration of the Court.

Sir *Edmond Sugden* and Mr. *G. Richards*, in support of the petition, said, the main facts

were admitted by the affidavit of Anne Thomson, the sister; she stated, that she managed the accounts for her mother, in respect of the intestate's estate; that she reserved some part of it from the accounts, for the purpose of constituting a separate estate for her sister, the plaintiff's wife, believing that she was justified in doing so, in consequence of the ill treatment her sister received from the husband; and that she did not inform her mother or sister of the fact, of falsifying the accounts, or of her intention in doing so. She had afterwards deposited with the Master, another book she kept, containing a true account of her brother's estate.

Mr. *Knight* and Mr. *Wigram*, for the defendants, submitted, that the petition was wholly unnecessary, as the whole of its prayer had been already complied with. The costs of the petition, the plaintiffs would have when the cause came before the Court on further directions, if the Court should think them entitled to such costs; but as to the costs of the accountant, they submitted, that it was not the course of practice to allow them, without the direction of the Court first had been obtained, for employing an accountant.

His Honour, the *Vice Chancellor*.—The necessity for the petition arose from the mistaken and improper conduct of the sister, Anne Thomson, in attempting to provide against an evil which she apprehended to her sister, by reason of the husband's conduct, and that in a way which this Court could not sanction. The costs of the petition may be reserved as costs in the cause, to be hereafter dealt with, together with costs of other proceedings before the Master. But the costs of the accountant stood on a different ground; they were not usually allowed; but as the necessity for employing the accountant, arose from the administratrix trusting the daughter, and from her falsification of the accounts, it was but reasonable that both should pay the expences.

*Toner v. Thomson*, Michaelmas Term, 1834.

#### Rolls Court.

##### TRUSTS OF A CHARITY.—INSOLVENT CORPORATION.

*The insolvency of a corporation is not a ground for removing them from the trusts of a charity, there being no proof of misapplication of the charity funds.*

This was a motion for a receiver to certain charity estates, and for removing the present trustees. It appeared that the corporation of Newbury were trustees of the two charities called the Kendrick and the Cowslip Charities. Informations were filed in the Court of Chancery against the trustees in the years 1829 and 1830, and a decree was pronounced on them, by the late Master of the Rolls, directing an account to be taken before a Master of these charities up to the year 1825. That decree was appealed against, but confirmed by the late Lord Chancellor. The corporation had since then become bankrupt.

*Mr. Bickersteth* and *Mr. Pemberton* having on the part of the relators stated these facts, contended, in support of the motion, that as the corporation had become bankrupt, they ought not to be allowed to continue any longer in the trust of the charities. They also alleged that the defendants had been guilty of breaches of trust before and after the decree made in this cause. Upon both grounds, they submitted that the defendants ought to be removed from the trusts, and a receiver appointed until other trustees could be agreed on.

*Mr. Tinney* and *Mr. Ching, contra.*—The only question was, whether insolvency in a corporation in their corporate capacity, disqualified them from being trustees to a charity. There was neither reason nor authority of a decided case, nor rule of equity, for the position sought to be established by this motion, and there was no breach of trust to warrant the removal of these trustees.

The *Master of the Rolls* (Sir C. C. Pepys) having taken time to look into the affidavits in support of the motion, said, the application for a receiver, and for the removal of the present trustees, rested on two grounds: the insolvency of the trustees, and the alleged misapplication of the trust funds. With respect to the first, he knew of no case—none was produced—to shew that the management of a charity had been taken from a corporation on the ground that they had not corporate funds to answer corporate demands, and he would not establish a precedent by appointing a receiver in this case on such a ground only. Persons who selected a corporation for performing the trusts of a charity were generally well aware of the advantages and disadvantages attending such a selection; and that if on the one hand they had the disadvantage of such trustees not coming under the description of accounting parties individually, they had, on the other, the great advantage of publicity, of establishment, and of perpetual continuance. With respect to the misapplication of the charity fund, the evidence as to that contained in one of the affidavits must have been known to the Court when the decree was made, as the decree alluded to it. The other evidence proved that there was no misapplication subsequent to the decree. The application failing of support on either ground, is refused, but it is not necessary to throw the costs of it on the applicants.

*Attorney General v. The Corporation of Newbury*, Michaelmas Term, 1834.

### King's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.—  
WRIT OF TRIAL.

*A rule for judgment as in case of a nonsuit may be obtained where a plaintiff has countermanded his notice of trial before the sheriff on a writ of trial, in the same manner, and on the same principle, as in the superior Courts.*

This was an application for judgment as in

case of a nonsuit. Issue was joined on the 10th of December. Notice of trial for the 18th of December, before the sheriff of Lancashire, at the Manor Court Room, Manchester. The plaintiff did not proceed to trial, but countermanded the notice of trial.

*Patteson, J.*—It has been several times held by the Courts, that as the proceedings in the Sheriff's Court where the money demanded of the plaintiff does not exceed 20*l.* on the writ of trial, are substituted for those in the superior Court from which that writ issues, the parties, with respect to obtaining judgment as in case of a nonsuit, are in the same situation as they would be if the proceedings were still in the superior Court. The rule prayed for may therefore be granted.

Rule nisi granted.—*Ward v. Krank*, M. T. 1834. K. B. P. C.

ATTACHMENT.—SHERIFF.—SERVING OF RULE.  
—CONTEMPT.

*Under what circumstances a copy of a rule for bringing the body of the defendant in, need not be served, in order to found an application for an attachment for disobedience to it.*

Motion for an attachment against the sheriff for not bringing in the body. The only peculiarity in the case was, that the under-sheriff was the person serving the order for making the return, and the affidavit on which the motion was made stated the "original" rule, and not a copy of it, to have been served.

*Patteson, J.*—That is sufficient.

Rule granted.—*Leaf v. Jones*, H. T. 1835. K. B. P. C.

SCI. FA.—WRITS OF EXECUTION.—TESTE OF WRIT.—UNIFORMITY OF PROCESS ACT.

*It is wrong to allege in a sci. fa. that the suit was commenced by bill, or that the bail were put in of a term previous to the commencement of the action.*

*The ca. sa. must not be tested of a term previous to the day of signing judgment, although the 3 & 4 W. 4, c. 67, has passed.*

This was an application for a rule nisi to set aside the *sci. fa.* issued against bail in this case, on three grounds. The first was, that the *sci. fa.* stated the action to be commenced "by bill without our writ." Whereas it was commenced by writ of summons. Secondly, that it was alleged that bail had been put in of a term before the action had been commenced. Thirdly, that the writ was tested on the 3d of November, and made returnable on the 15th of November "next coming"—evidently meaning November 1835. This, it was submitted, was irregular; for in meane process a term ought not to elapse between the teste and the return of the writ.

A rule nisi was obtained and cause shewn, when—

*Littledale, J.*, said that the writ was irregu-

lar on the two first grounds, but the third was frivolous. He recommended the parties to enter into some arrangement, and for that purpose directed the rule to stand over.

The defendant afterwards applied for and obtained a rule *nisi* for setting aside the *ca. sa.* issued against him, it having been tested before the time when the judgment was signed, which was on the 18th of June. The writ was tested on the 12th of June, being the last day of Trinity Term. It appeared from this, that the writ of execution was issued before the judgment was signed.

On shewing cause against this rule, it was submitted, that by the 3 & 4 W. 4, c. 67, s. 2, the plaintiff was at liberty either to teste his writ of execution according to the old form, or of the day on which it issued, pursuant to the statute.

*Littledale, J.*, was of opinion that the writ was clearly irregular, and therefore directed the rule to be made absolute.

The parties afterwards agreed that both rules should be made absolute, without costs.

Rules accordingly.—*Peacock v. Day*, M. T. 1834. K. B. P. C.

### Eschequer of Pleas.

#### EXECUTION.—TESTATOR.—IMMATERIAL AVERMENT.—DEMURRER.

*What allegation may be rejected as surplusage, in a declaration by an executor.*

In this case the defendant demurred specially to the declaration, on the ground of its being in *debet* and *detinet*. It was an action brought by two plaintiffs, as executrices, and the declaration complained against the defendant of a plea that he render to the plaintiffs, as executrices, the sum of 500*l.*, which he owed to and unjustly withheld from them.

The Court overruled the demurrer, and allowed the allegation to be rejected.

Judgment for the plaintiffs.—*Collett and another, executrices, &c. v. Collett*, M. T. 1834. Excheq.

#### SERVICE OF RULE.—ALLEGATION IN AFFI- DAVIT.

*In order to make a special service of a rule good, the statements which the deponent relates as made by others, and on which the application is founded, he must state himself to believe.*

A rule *nisi* had been obtained in this case, the service of which was on the laundress, at the defendant's chambers.

It was now sought, on an affidavit of service, to make this rule absolute. The affidavit merely stated that the laundress admitted herself to be the defendant's servant, but it did not state that the deponent believed that to be the case.

The Court thought the affidavit insufficient, on the ground of the deponent not swearing

to his belief of her acting in the above capacity.

Rule refused.—*Kent v. Jones*, M. T. 1834. Excheq.

#### COSTS OF JUSTIFYING BAIL.—PRISONER.— NOTICES.

*Before a defendant who is a prisoner can justify bail after a previous rejection, he must deposit or pay the costs of it; and his being a prisoner does not free him from his liability to pay costs of an inefficient attempt to justify.*

In this case bail were opposed on several grounds. The first was, that the costs of a former unsuccessful attempt to justify had not been paid. Secondly, that fresh bail had been put in without an order of the Court.

In support of the bail, it was contended, that no costs were payable until three notices had been given. As to the second objection, the rule did not apply to cases like the present, the defendant having rendered to prison since the former attempt to justify.

*Per Curiam*.—The defendant must either pay or deposit the costs.

This having been done, the bail were rejected on another ground.

Application was then made on the part of the plaintiff for the costs of this opposition, although the defendant was a prisoner.

*Per Curiam*.—The plaintiff is entitled to his costs. The circumstance of the defendant's being a prisoner makes no difference.

*Pusmore's bail*, M. T. 1834. Excheq.

#### AFFIDAVIT OF MERITS.—COSTS.—UNNECES- SARY LENGTH OF AFFIDAVIT.

*Where an application is made to set aside a regular judgment on payment of costs, and an affidavit of merits, an affidavit of the defendant in answer to that of merits will not be allowed by the Court.*

Cause was shewn in this case against a rule *nisi* which had been obtained to set aside the judgment on payment of costs, and on an affidavit of merits. The affidavits in this case were very long, alleging great vexation on the part of the defendant, in having first delivered a bad plea, which was returned, and then a special plea without the signature of counsel, for which judgment was signed. Under these circumstances, it was submitted, the defendant could expect no indulgence.

In support of the rule, complaint was made of the length of the plaintiff's affidavit produced in answer to the defendant's positive affidavit of merits.

*Gurney, B.*, directed the rule to be made absolute, on payment of costs by the defendant; but disallowed the costs of those parts of the plaintiff's affidavit which answered the affidavit of merits.

Rule accordingly.—*Heane v. Battersly*, M. T. 1834. Excheq.

RELATION.—SITTINGS.—ADJOURNMENT.—  
ABATEMENT.

*The sittings in term cannot be considered as one day, and therefore a trial on the last day cannot have reference to the first.*

This was an application to the Court specially to adjourn these causes to Tuesday the 25th, the last day of term. It appeared that they were three actions of trespass for assaults, and were to be tried on Monday the 17th of November, but were adjourned to Wednesday the 19th, on which day the defendant died, but the causes were not tried. It was contended, that the sittings were but one day in law, and where the death occurred after the first day of the sittings there must be a relation back to that day.

*Per Curiam.*—We are of a different opinion. It is only lately that there has been an adjournment to a subsequent day in term. An objection would present itself in any mode, for the *postea* must be dated of the very day of the trial.

Motion refused.—*Johnson v. Budge; Thomas v. Budge; Nathan v. Budge*, M. T. 1834. Excheq.

COUNTRY AND TOWN BAIL.—COSTS OF  
JUSTIFICATION.

*Both country and town bail are within the rule of court as to the costs of justification.*

In this case an application was made for the costs of justifying bail. It was a case of country bail, and time had been given for the purpose of explaining respecting a mortgage which was said to exist on the property mentioned in the affidavit. This was now done by producing a satisfactory affidavit.

*Gurney*, B. was of opinion that the rule was equally applicable to country as to town bail. The defendant therefore must have his costs.

Costs allowed.—*Grant's bail*, M. T. 1834. Excheq.

INDORSEMENT OF DEBT AND COSTS.—PRIN-  
CIPAL AND INTEREST.

*The Court will take judicial notice of the defendant's claim for interest, in his indorsement of debt and costs claimed by him.*

This was an application to set aside a bail-bond on the ground of an insufficient description of the amount of the debt in the indorsement on the writ of *capias*. The indorsement ran thus: "The plaintiff claims 20*l.* 4*s.* 6*d.* for debt, with interest thereon from the 10th day of March last, and 3*l.* for costs; and if the amount thereof be paid, &c." This, it was contended, was not sufficiently clear.

*Per Curiam.*—We think that is quite sufficient.

Rule refused.—*Coppels v. Brown*, M. T. 1834. Excheq.

## AFFIDAVIT TO HOLD TO BAIL.—INDENTURE.

*The word "indebted," in an affidavit of debt, obviates the necessity of the allegation, that the undertaking in the indenture on which the action is founded is not fulfilled.*

In this case an application was made to the Court on behalf of the defendant, to discharge him out of custody, on the ground of a defect in the affidavit to hold to bail. The affidavit stated that *Thomas Wray*, (the defendant) was justly and truly indebted to the deponent in the sum of 250*l.* and upwards, upon and by virtue of a certain indenture; but it did not negative a performance of the undertaking by the defendant, nor that it still remained due. This, it was contended, rendered the affidavit defective.

*Per Curiam.*—We think the affidavit is sufficient; for the defendant could not be indebted if the money had been paid.

Rule refused.—*Lambert v. Wray*, M. T. 1834. Excheq.

JUDGMENT AS IN CASE OF A NONSUIT.—AFFI-  
DAVIT.

*What is a material omission, in the form of an affidavit.*

Motion for judgment as in case of a nonsuit. The peculiarity in this case was, that the affidavit on which this motion was founded, omitted the word "oath." It stated, that *A. B.* of, &c. "maketh and saith;" this, it was contended, was immaterial, as the affidavit appeared to be sworn.

*Parke*, B., was of opinion, that the word "oath," was a material omission, and that the rule could not be granted.

Rule refused.—*Oliver v. Price & others*, M. T. 1834. Excheq.

CHANGING VENUE.—COMMON AFFIDAVIT.—  
BILL OF EXCHANGE.

*The defendant cannot change the venue on the common affidavit, where the cause of action consists partly of a bill of exchange.*

This was an application to change the venue from London to Liverpool, upon the common affidavit. The action, which was for 180*l.*, was partly on a bill of exchange, and the remainder for goods sold; the goods, however, were not a consideration for the bill.

*Gurney*, B., was of opinion, the venue could only be changed on special grounds, as part of the demand arose on a bill of exchange.

*Walthew v. Syers*, M. T. 1834. Excheq.

## BAIL.—AFFIDAVIT OF SUFFICIENCY.—COSTS.

*The defendant will neither pay nor receive costs, where the bail only swears to being "possessed" of the required amount.*

Bail was opposed in this case, on the ground of the affidavit substituting the word "possessed," instead of "worth." This defect, it was



submitted, entitled the plaintiff to costs, even if the bail should prove to be sufficient.

In support of the bail, a fresh affidavit was produced, wherein the bail swore to be "worth" the required sum.

*Parke, B.*, The defendant will not receive the costs of justifying, even if the bail should prove to be sufficient in other respects. Nor will he pay costs.

The bail then justified without further opposition.

*Popjoy's Bail*, M. T. 1834. Excheq.

#### INDORSEMENT OF DEBT AND COSTS.—CAPIAS.

*If in the indorsement of debt and costs claimed by the plaintiff in an action commenced by capias, the word "execution" is substituted for "service," the plaintiff may amend on terms.*

In this case, applications were made to the Court for two rules *nisi*, to have the bail-bond cancelled, on each defendant entering a common appearance, on the ground of irregularity in the indorsement of debt and costs on the writ of *capias*. In the indorsement on the writ, the word "execution" was substituted for "service."

*Parke, B.*, after having taken time to consult the Judges of the other Courts, said, that the plaintiff in this case must be allowed to amend, and to shew the amendment as cause against the rule for setting aside the proceedings, which, on payment of costs, will be discharged; the defendant being allowed four days from the commencement, to pay the debt. His Lordship suggested, that notice to this effect should be given to the plaintiff, and that if he took out a summons to amend, and pay the defendants their costs occasioned by the irregularity, up to this time, further proceedings be stayed. If, however, he refused so to do, then the rule, as prayed, may be drawn up.

*Tabrum v. Thomas*, M. T. 1834. Excheq.

### NOTES OF THE WEEK.

#### THE NEW JUDGE.

WE are informed that Mr. Serjeant Coleridge will be the new Judge, in the place of the late Mr. Justice Taunton.

#### CHANGE OF LANCASHIRE ASSIZES.

We understand it has been settled that the Judges will proceed from York to Liverpool to hold the next Lancashire assizes. An Order in Council will be issued for this purpose, under the authority of 3 & 4 W. 4, c. 71.

#### LAW PROMOTIONS.

To the list of King's Counsel given at p. 200, (then intended, and since appointed) should be added the name of Mr. H. J. Shepherd, Counsel to the Admiralty and Navy, who, having been called to the bar on the 3d of Feb. 1809, will rank next after Mr. Burge, and before Mr. Skirrow.

Mr. Serjt. Atcherley has been appointed Attorney-General of Lancaster, in the place of Sir Frederick Pollock.

### ANSWERS TO QUERIES.

#### Practice.

#### WRIT OF EXECUTION. P. 209.

1. A writ of execution being made returnable "immediately after the execution hereof," is in force until executed, however long the period may be, although it might be for several years before such execution; but if it be simply "returnable immediately," it is impossible, in my opinion, that it can be in force for any great length of time. It would, I think, be the same as issuing the writ on one day, and making it returnable the next; and the words "returnable immediately," cannot be considered to extend to any length of time. But suppose that as soon as the sheriff receives the writ, he should endeavour to execute it, and whether executed or not, he is to return it "immediately."

T. B.

2. A writ of execution "returnable immediately," is in force until it is executed; but the sheriff cannot be ruled to return it, until the plaintiff has satisfied himself that it has been executed.

E. H.

#### COMMON PLEAS.—NEW RULE OF 25 NOV. P. 159.

Upon referring to this rule, it will appear to have reference to "attorneys already admitted, not having entered their admissions, and attorneys hereafter to be admitted." As there are few attorneys who are already admitted without having entered their admissions, this rule, unless amended, will have very little effect; Why should attorneys pay the criers of the Court, who expect a gratuity on every trial? an attorney recently paid on passing a record for trial, a fee of 6s. 8d. for arrears of termage fees; he has since thought, that many attorneys avoid the Court of Common Pleas to escape this personal tax, as the client or his opponent does not repay it.

T. T. T.

#### Law of Landlord and Tenant.

#### UTENSILS DISTRAINABLE. P. 112.

The general rule is, that all moveable things, where they are the property of the tenant, or of third persons, are liable to be distrained. An exception, however, is taken with respect to

implements of trade, where they are in actual use; and even if *not* in use, they are exempted so long as other distrainable things remain upon the premises. So that the question in this case is, whether the mangle *was in actual use* at the time the distress was made; for if it was in use, it will be privileged from distress, otherwise not. See the case of a weaver's loom, *Gorton v. Fulkner*, 4 T. R., and of a stocking frame, *Simpson v. Hartopp*, Willis, 512.

CIVIS.

### Law of Property and Conveyancing.

MORTGAGEE. VOL. 8, P. 495.

Your Correspondent X. Y., by his answer to the query p. 142, does not seem aware of Lord *Hardwicke's* decision in *Partridge v. Porlet*, 2 Atk. 383, in which he held, that a tenant for life, *without impeachment of waste*, is bound to keep the houses in repair. The case of *Wood v. Gaynor*, Ambl. 395, alluded to by your Correspondent, though not cited in the above, must, I think, be considered as overruled by it; so that there would seem to be no case in which a tenant for life is not bound to repair. See also Co. Litt. 53 b. & 55.

CIVIS.

COPYHOLDS.—DEBTS. P. 143.

The only question is, what is the effect of the Statute 3 & 4 W. 4, c. 104, as regards copyholds. By that Statute it is enacted, that when any person *shall die* entitled to any interest in copyhold or customary lands, not made subject to his debts, they should be assets in equity, for the payment of his debts. Now this clearly does not affect copyholds, till *after the decease of the owner*. The law, therefore, in other cases continues the same as before the passing of the above act. It is evident, then, that copyholds are not liable to be extended during the owner's life, see *Res v. Lord Viscount Lisle*, Parker's Rep. 195. Of course, after the death of the owner, a debt due to the crown will have priority, under the Statute 3 & 4 W. 4, c. 104.

CIVIS.

COVENANT FOR QUIET ENJOYMENT. P. 176.

Whether *C.* has any defence, depends entirely on the form of the covenant. If the covenant be against all the world, without any restriction, *C.*, I submit, would have no defence on the ground of the non-performance of the covenants by *E.*, entered into by him; such breach might form the ground of a separate action. If it be only against the acts of *C.* and those claiming under him, then the title of the lessor *A.*, being paramount to that of *C.*, would not be within the covenant of *C.* with *E.*, and, consequently, *E.* could maintain no action. *Merrill v. —*, 4 Taunton, 329. If the covenant be qualified, as it generally is, in the

following terms, viz:—*he, the said E. paying, performing, fulfilling, and keeping, the rent, covenants, and agreements, on his part and behalf covenanted to be paid, performed, fulfilled, and kept,—the said C. covenants for quiet enjoyment*; then, I think, the breach of the covenants by *E.*, would form a good ground of defence to an action by *E.*, as *E.* must aver that he had performed, or was ready to perform, or was prevented by the defendant *C.*, from performing the covenant on his part; and then the defendant *C.* could plead non-performance by the plaintiff *E.*, in bar.

SPES.

NEW TRUSTEE. P. 208.

No power of appointment of a new trustee being contained in the will, *A.* cannot, nor can the survivor appoint a new trustee; an application must be made to a Court of Equity, and such application must be by bill. Sir E. Sugden's Act, (1 W. 4, c. 60,) under which application may be made by petition, provides only for cases where the trustee is an infant; lunatic; out of the jurisdiction of the Court; where it is uncertain whether he be alive; where he is dead, and it is uncertain whether he has left an heir, or he or his heir refuses to assign; in the case of an executory trust, as trustee for sale. The 4 & 5 W. 4, c. 23, provides for those cases where the trustee dies without an heir. The case where a trustee is alive, and wishes to substitute another in his stead, or appoint a co-trustee, is not provided for.

SPES.

### QUERIES.

#### Practice.

INDORSEMENT OF CAPIAS.

In page 212 of your last Number, it is stated, that "it was held by *Tunton, J.*, that the sheriff was not bound to execute bailable process in which the place of abode and addition of the defendant were not *indorsed*," &c. Is it considered necessary to place the name and addition of a defendant on *the back of the capias, as well as in the body*?

A SUBSCRIBER.

### Common Law.

POOR RATES.—GAS PIPES, &amp;c.

Can you inform me where I can ascertain the principles upon which gas and water-pipes are assessed to the relief of the poor. II

LICENCE.—NOTICE.

*A.* applies on the general annual licensing day, to the justices then sitting, for a license to sell wine and spirits, under the 9 G. 4, c. 61, having previously complied with all the requisites of that statute with regard to notices. However, on making the application on that

day, he is, through ignorance, unprepared to prove his notices; the justices say, "You must go away now, but if you can bring evidence to prove your notices on this day fortnight, we will hear your case." When the case came on to be heard on that day fortnight, it was objected, by the opposing party, that the justices had given no proper notices of adjournment, in the manner prescribed by the 3d and 5th sections of the act, and consequently, the general annual licensing day having gone by, they had no power to grant the license at all. The justices, however, overruled this point, and proceeded to try the case on its merits. Was their decision good?

M. T.

## SURETY.—COSTS.

*A. B.*, *C. D.*, and *E. F.*, (the two latter as sureties) became jointly and severally bound to *G. H.* in a common bond for money lent. It being found necessary to put the bond in suit, an action was brought against *A. B.*, (the principal) only, which proceeded to verdict and judgment, there being a vexatious defence; but however proved fruitless, as *A. B.* went to prison—not in execution of the judgment, but at another's suit—and took the benefit of the Insolvent Debtors' Act. In an action against the sureties, or either of them, can *G. H.* recover the costs of his suit against *A. B.*—(not exceeding, together with principal, interest, and costs of the suit against the sureties, the penalty of the bond),—or would they be entitled to stay proceedings, on payment of principal, interest, and the last-mentioned costs only?

J. A. M.

## Law of Property and Conspicancy.

## REAL PROPERTY.—JUDGMENT.

In the case of freehold land, conveyed to such uses as the purchaser shall appoint, and in the mean time to him for life, with limitations over in the usual mode for preventing dower, does a judgment against the purchaser attach to or become a lien on such land,—as it would do if conveyed to the purchaser in fee: and is there any difference whether the seisin be carried to a trustee to uses, or the purchaser himself?

J. A. M.

## REAL PROPERTY.—REMAINDER.—ISSUE.

A testator devises an estate to trustees, their heirs and assigns for ever, subject to several life annuities charged thereon by his will, to the use of his youngest son *A. B.* and his assigns for life, sans waste; remainder to said trustees and their heirs, to support contingent remainders; remainder "to the use of the child

of the said *A. B.*, lawfully to be begotten, or children, if more than one, equally to be divided between them, share and share alike, and to take as tenants in common, and not as joint-tenants, and to the heirs of the body and bodies of such child or children, lawfully issuing; and for default of such child or children, or, in case there shall be any such, and he, she or they shall all die without having issue of his, her, or their body or bodies"—remainders over. *A. B.* has five children by his present wife, and it is not probable that she will have any more; but in the event of her death, *A. B.* may chance to marry again, and have a second family. Two of the present children are above the age of twenty-one years. What estates have the five children of *A. B.* now in esse, and in what proportion each; and what assurance can *A. B.* and the two children who are *sui juris* make to a purchaser or mortgagee?

J. A. M.

## Law of Landlord and Tenant.

## LANDLORD AND TENANT.

The costs of a distress for rent not exceeding 20*l.*, being limited by statute, in the case of a fraudulent removal of goods to prevent a distress, can the landlord charge and levy (besides the costs allowed as above) the expenses of following and taking such goods within thirty days, (which are generally considerable, by reason of the pursuit, and necessary employment of several persons, &c.) and can he, in any case, although the rent due exceed 20*l.*, charge and levy such last-mentioned expenses, whatever be the actual and reasonable amount, according to the attendant circumstances?

J. A. M.

## THE EDITOR'S LETTER BOX.

The information for the *Obituary*, should be sent on or before Tuesday next.

The names of the Gentlemen who have been recently appointed *Perpetual Commissioners*, should be forwarded immediately, in order to be inserted in the Supplement of this month.

The Queries and Answers of W. T.; "A Constant Reader:" and J. O., have been received.

The papers on Executory or Contingent Devises, the Six Clerks' Office, and on the Personal Service of Writs, will be considered.

# The Legal Observer.

Vol. IX.

SATURDAY, JANUARY 31, 1835.

No. CCL.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LAWYERS IN PARLIAMENT.

We are now able to present our readers with a pretty complete list as well of the actual members of the profession, as those who have recently belonged to us, who have been returned to Parliament, and the places which they represent. It will be seen that the present Parliament will by no means be, in the words of Lord Coke, "*Parliamentum indoctum* whereat no good law was ever made."

Abercrombie, Right  
Hon. J. - - - Edinburgh.  
Aglionby, H. A. - - - Cocker mouth.  
Beckett, Right Hon.  
Sir J. - - - Leeds.  
Buller, C. - - - Liskeard.  
Campbell, Sir J. - - - Edinburgh.  
Carter, J. B. - - - Portsmouth.  
Ewart, W. - - - Liverpool.  
Fergusson, Right Hon.  
R. C. - - - Kirkcudbright.  
Follett, Sir W. W.,  
Solicitor General - Exeter.  
Freshfield, J. W. - - - Penryn.  
Goulburn, Serjt. - - - Leicester.  
Grey, Sir G. - - - Devonport.  
Harvey, D. W. - - - Southwark.  
Jervia, J. - - - Chester.  
Kelly, F. - - - Ipswich.  
Kennedy, J. - - - Tiverton.

Lefroy, Serjt. - - - Dublin University.  
Lennard, T. B. - - - Maldon.  
Lushington, Dr. - - - Tower Hamlets.  
Lynch, A. H. - - - Galway Town.  
Maclean, D. - - - Oxford Town.  
Nicholl, Dr. - - - Cardiff.  
Neeld, J. - - - Chippenham.  
O'Connell, D. - - - Dublin City.  
Pemberton, T. - - - Ripon.  
Pepys, Sir C. C., M. R. Maldon.  
Pollock, Sir F., Attor-  
ney General - - - Huntingdon.  
Poulter, J. - - - Shaftesbury.  
Fraed, J. M. - - - Yarmouth.  
Pryme, R. - - - Cambridge.  
Rice, Right Hon. T. S. Cambridge Town.  
Roebuck, J. A. - - - Bath.  
Rolfe, R. M. - - - Penryn.  
Scarlett, Hon. R. C. - - - Norwich.  
Shaw, F., Right Hon. Dublin University.  
Shiel, R. L. - - - Tipperary County.  
Strutt, E. - - - Derby.  
Sutton, Rt. Hon. Sir  
C. M. - - - Cambridge University.  
Talfourd, Serjt. - - - Reading.  
Tancred, H. W. - - - Banbury.  
Tooke, W. - - - Truro.  
Twiss, H. - - - Bridport.  
Villiers, C. P. - - - Wolverhampton.  
Wilde, Serjt. - - - Newark.  
Wilks, J. - - - Boston.

## ON DIRECTIONS TO EXECUTORS FOR THE PAYMENT OF DEBTS.

As a general rule, in the construction of devises for the payment of debts, it is now settled, that when a testator introduces into the commencement of his will a direction that his debts shall be paid, or words of a similar import, this amounts to a charge of his debts on his real estate. To this rule there are, however, some exceptions, one of which we now propose to consider. It is this: that when a testator directs that his debts shall be paid by his executors hereinafter named, and then proceeds to devise his real and personal estate, it is to be presumed that the payment of his debts is to be exclusively made out of the funds which by law come into the hands of the executors, and not out of the real estate. This principle was first recognized by Lord *Thurlow*, in the case of *Brydges v. Landen*,<sup>a</sup> and has been followed by several other Judges.

Thus where a testator directed in the first place that all his just debts and funeral expenses should be paid and discharged, as soon as conveniently might be after his decease, by his executrix and executors therein-after named, and then disposed of his real estate; and after other devises, gave his wife an estate for life, in part of the real estate, and appointed his wife and two other persons (who took no interest in the real estate) executrix and executors; Lord *Alvanley*, M. R., held that it was quite clear that this was not a charge upon the real estate of the testator.<sup>b</sup>

So where<sup>c</sup> a testator first directed that all his just debts and funeral expenses should be satisfied and paid by his executors therein named, as soon after his decease as might be, and then gave certain leasehold premises to his wife, and afterwards devised a freehold estate to his son *W. D.*, and appointed *W. R.* and *W. G.* executors, it was held by Sir *W. Grant*, M. R., that the real estate was not charged, as no real estate passed to the executors directed to pay the debts.

In the case of *Willan v. Lancaster*,<sup>d</sup> a will began as follows: "In the first place I will that all my debts and funeral expenses be paid by my executors hereinafter

named. Then I give and bequeath unto my eldest son *R. W.* my estate at *Shap*, on condition that he make up the deficiency in the payment of the two legacies which I have left to my son and daughter:" and Sir *John Copley*, M. R., held that the estate at *Shap* was not charged with the payment of the debts.

The same rule, *à fortiori*, applies to the payment of legacies. Thus where a testatrix directed her legacies to be paid by her executor, to whom she afterwards gave all her real estate and the residue of her personal estate, after payment of her debts and funeral expenses, Sir *John Leach*, V. C., held that the legacies were not charged on the real estate.<sup>e</sup>

The case of *Clifford v. Lewis*,<sup>f</sup> which was decided by Sir *John Leach*, V. C., has some time been considered as contrary to the doctrine on which all these cases were decided; but in that case the words were, "I will and direct that my just debts, funeral and testamentary expenses, be paid and satisfied," without any reference to executors; and all doubt as to the opinions of this learned Judge on the point has been set at rest by the case of *Warren v. Davies*,<sup>g</sup> which has been recently reported, and which is as follows,—in which it will be seen that Sir *John Leach*, then Master of the Rolls, decided in accordance with the principles we have endeavoured to enforce.

Richard Davies began his will in the following words: "First, I will and direct that all just debts, legacies, funeral expenses, and testamentary charges, shall be paid by my executors hereinafter named." He then gave his real estates in the parishes of *Whittington* and *St. Martin's*, and also all his money, farming stock, household furniture, and effects, to his wife for life, and after her decease he directed the whole of his property on *Ifton Rhyme* to be sold, as his executors thereafter named should direct, and he devised certain of his messuages and lands in *Whittington* aforesaid, to his son *Thomas Davies* in fee. After making divers pecuniary bequests to his other children, the testator gave the residue of his estate and effects, both real and personal, to his said son *Thomas Davies*. The executors named in the will were the testator's son *Thomas Davies*, and *Roger Ward Davies*, both of whom proved the will. *John Davies* was the eldest son and heir at

<sup>a</sup> Cited 3 Ves. 550, and 2 Jarm. Dev. 654.

<sup>b</sup> *Keeling v. Brown*, 5 Ves. 359.

<sup>c</sup> *Powell v. Robins*, 7 Ves. 209; and see *Williams v. Chitty*, 3 Ves 545.

<sup>d</sup> 3 Russ. 108.

<sup>e</sup> *Parker v. Fearnley*, 2 Sim. & Stu. 592.

<sup>f</sup> 6 Madd. 31.

<sup>g</sup> 2 Myl. & K. 49.

law of the testator. Both the executors attested the execution of the will, and the devise of the real estate to Thomas Davies being therefore void under the 25 G. 2, c. 6, and the estate having descended on John Davies the heir at law, the question in the cause was, whether the estate, which the will purported to devise to Thomas Davies, was or was not charged with the payment of debts and legacies, by the effect of the first words of the will. The *Master of the Rolls* said, where a testator directs his debts and legacies to be paid by his executors after named, all property given to the persons who are named executors jointly, will be charged with the payment of debts and legacies. The devised estate in question is not given to the executors jointly; it is specially devised to Thomas Davies, who happens to be one of the executors, but it is not for that reason to be considered as given to the executors, and charged with the payment of debts and legacies within the intention of the testator. 2 M. & K. 49.

But it is to be noticed, that when, after a direction to executors to pay debts and legacies, any property is devised or bequeathed to them alone, then the property devised or bequeathed will be charged with the payment of the debts and legacies. This was decided by Sir J. Copley, M. R., in *Hewell v. Whitaker*,<sup>a</sup> on a review of all the authorities, the learned Judge observing, "When the testator in his will directs that all his just debts and funeral expenses be fully paid by his executor thereinafter mentioned, it must be intended that he had then fully determined who that executor should be, and the will is to be construed as if he had said, 'I direct that my just debts and funeral expenses be fully paid and satisfied by my nephew W. W., whom I hereinafter name my executor.' In such case the obligation to pay his debts and funeral expenses would be a condition imposed upon the nephew W. W., to be satisfied as far as all the property which he devised under the will would extend, whether personal or real. This principle will reconcile all the authorities, and will be of ready application in future cases." But see *Parker v. Fearnley*, stated p. 258.

<sup>a</sup> 3 Russ. 347.

## SUGGESTIONS FOR THE IMPROVEMENT OF THE LAW.

### No. III.

To the Editor of the Legal Observer.

#### PERSONAL SERVICE OF WRITS.

Sir,

On reading the decisions, reported in the Legal Observer, as to the writ of *distingas*, the unwillingness on the part of the Judges to grant it is evident to the most cursory reader, and, with due submission to such high authority, it appears to me with very inadequate reason.

Any one acquainted with the practice of an office is aware that in a vast number of cases the defendant keeps out of the way to avoid being served; and that whether he does so or not, it is certain that in ninety-nine instances out of every hundred he will receive any notice left for him at his house.

Now considering the hundredth case, (by the bye a very liberal computation,) and the small charge an attorney must be content with for the copy and service of the writ, 5s. being all that is allowed for whatever number of times he may call, and though at a distance of the whole extent of the metropolis, I think that *personal service* of the writ of *summons* ought not to be required, and that certainly the trifling benefit derived from the writ of *distingas* ought not to be abridged.

As this is a question which affects the whole profession in a material degree, your giving publicity to something on the subject, in your ably conducted work, will oblige

THETA.

## ABSTRACTS OF RECENT STATUTES.

A knowledge of the several acts of the last session, relative to taxes, may be occasionally useful to the practitioner; and we therefore briefly state the purport of the three principal statutes. The House Duty Repeal Act we gave in vol. viii. p. 182.

#### ASSESSED TAXES COMPOSITION.

4 & 5 W. 4, c. 54.

This is intitled "An Act to continue for five years, from the 5th day of April, 1835, and to amend the acts for authorising a Composition for Assessed Taxes." [Passed 13 August, 1834.]

The preamble recites, That under several acts divers persons have compounded for their assessed taxes for a certain term, and their

contracts of composition have been from time to time renewed or continued for a further term, and such contracts will expire on the 5th day of April, 1835; and, that it is expedient to relieve such persons who have so compounded, as well as others who may be willing to compound, under the provisions of this act, from an annual assessment, for a further term.

The following is the substance of the enactments:—

1. Assessments for the year, ending 5th April, 1835, to remain to the same amount, if compounded for under this act, for the term of five years.

2. Compositions under former acts may be renewed.

3. How contracts of composition are to be made.

4. Enumeration of articles to be compounded for under this act.

5. Persons assessed for the year, ending 5th April, 1835, may compound on the amount assessed in that year, paying an additional duty of 5*l.* per cent.

6. Exception as to taxes in respect of articles kept for trade, &c.

7. Persons who have compounded for window tax for the year, ending 5th April, 1835, and persons not then liable to that tax, may open additional windows free of duty. Proviso as to additions to houses.

8. Compounders on the other assessed taxes may renew the same on the amount charged thereby, together with a further duty of 5*l.* per cent.

9. Persons desirous of continuing their former compositions to deliver their contract or copy, with notice, before the 5th April, 1835, in England, and before Whitsunday, 1835, in Scotland.

10. Persons having compounded and reduced their establishments, may compound, *de novo*, on the assessment of 1835, on giving notice within three months, and annexing thereto a return of articles chargeable.

11. Persons who, since compounding, have increased their establishments to double the amount compounded for, or who have compounded on too small an amount of duty, may enter into compositions *de novo*.

12. Persons who have compounded under former acts, giving notice of reduction in their establishment, to enter into new composition.

13. Persons beginning to keep or increase an establishment in 1834, may compound on the assessment of the succeeding year.

14. Renewed composition not to extend to articles of a different description than authorised by former composition.

15. Compounders having removed to another division of commissioners, may compound therein.

16. Compounders entitled to the like privileges of increasing establishments, &c., as under former acts. Exceptions.

17. As to persons assessed, or who have compounded under former acts, in places where they are not entitled to compound under this act.

18. Compounders not liable to penalty of assessed tax acts, except penalty for concealment to evade assessment of duty.

19. Persons occupying houses, or keeping articles compounded for by other persons, or set up by other persons under colour of the composition, to be liable to the duty. Intent to defraud, treble the amount of duty.

20. Persons procuring a contract to be entered into to a less amount than ought to be included, the contract to be void, and the offender to forfeit 50*l.*

21. Persons having diminished their establishment during their residence out of Great Britain, not entitled to compound.

22. In cases of sickness, persons may sign their contracts in the presence of the collector.

23. Compositions with persons afterwards succeeding to estates, and keeping larger establishments, to cease, with power to compound on the assessment.

24. Commissioners and other officers acting under the former composition acts, to act in like manner in the execution of this act.

25. Provisions of former acts to remain in force.

26. Limitation of time for executing the powers of the former acts extended to this act.

27. Persons intending to compound to give notice thereof, together with a statement of the articles of composition.

28. Errors or mistakes in compositions may be amended.

29. The monies arising by compositions to be paid into the consolidated fund.

30. Construction of words.

31. Schedule annexed to be deemed part of act.

#### LAND-TAX AMENDMENT.

4 & 5 W. 4, c. 60.

THIS is intitled, "An Act to amend the Laws relating to the Land and Assessed Taxes, and to consolidate the Boards of Stamps and Taxes." [Passed 13 August, 1834.]

The preamble recites, That for the more convenient execution of the acts relating to the land tax, it is expedient to authorise the commissioners acting in the execution of the acts for any county, shire, or riding, to alter the jurisdiction of such parishes, tithings, townships, hamlets, or places, by transferring any one or more thereof from one division to another of the same county, or by creating thereout any new division or divisions, for the purposes of the act, as occasion shall require.

The following is the substance of the enactments:—

1. Commissioners empowered to transfer jurisdictions from one hundred or division to another, or to create new divisions.

2. Assessments of certain lands in the places in which they have usually been assessed, declared valid.

3. Certain provisions of the acts recited are repealed, viz.—2 W. 4, c. 45, s. 22; 18 G. 2, c. 18; and 20 G. 3, c. 17.

4. So much of 54 G. 3, c. 123, as recited, is repealed.

6. Certificate of land-tax commissioners in lieu of duplicates mentioned in the last recited act.

6. District commissioners, with the approbation of the Treasury, may remunerate assessors for making their assessments, out of their surplus land-tax.—6 G. 4, c. 32.

7. Rules and regulations contained in 48 G. 3, c. 141, and 3 G. 4, c. 88, to extend and apply to the land-tax.

8. The boards of commissioners of stamps and commissioners for the affairs of taxes to be one consolidated board of commissioners of stamps and taxes.

9. Powers and authorities vested in the commissioners of stamps and commissioners for the affairs of taxes, respectively to be exercised by the commissioners of stamps and taxes.

10. All commissioners and appointments of officers under the commissioners of stamps and the commissioners for the affairs of taxes, to remain in force.

11. Bonds and securities to remain in force, and to extend to the duties under the care of the commissioners of stamps and taxes.

12. Commissioners of the Treasury may appoint distributors of stamps to be also receivers of the land and assessed taxes.

13. Receivers appointed under this act to give security.

14. Powers and provisions of former acts to be applied to and executed by the receiver appointed under this act.

15. Bonds, commissioners, &c., under this act to be free from stamp duty and fees.

#### ASSESSED TAXES RELIEF BILL.

4 & 5 W. 4, c. 73.

THIS is intitled "An Act to grant Relief from the Duties of Assessed Taxes, in certain cases." [Passed 14 August, 1834.]

The following is the substance of the enactments:—

1. Exemptions granted on assessments made after 5th April, 1834.

2. Farm-houses belonging to farmers under 200*l.* a year, exempted from the duties on windows.

3. Exemption in respect of male servants under eighteen years of age.

4. Roman Catholic Clergymen exempted from the additional duties granted in respect of bachelor's servants.

5. Clergymen and Dissenting Ministers, whose incomes are under 120*l.* a year, exempted from the duty on one riding horse.

6. Repeal of the exemption granted by 11 G. 4, and 1 W. 4, c. 35, to occupiers of farms under 200*l.* a year, for the duty on one horse occasionally used for riding. Exemption granted in lieu thereof of the occupiers of farms under 500*l.* a year.

7. Exemption in respect of husbandry horses and mules occasionally used for other purposes of draught, or let to draw for hire.

8. Licensed post-masters allowed to use

their post-horses in husbandry, and in drawing manure, fodder, &c., without being liable to duty.

9. Exemption in respect of horses rode by bailiffs, shepherds, and herdsmen.

10. Exemption in respect of dogs kept for the care of sheep.

11. Exemptions to be claimed in the manner directed by 43 G. 3, c. 161, s. 36.

12. Servants, horses, and dogs, wholly exempted from duty, not to be reckoned for the purpose of assessing the progressive duties in respect of other servants, &c., kept by the same person.

### PRACTICAL POINTS OF GENERAL INTEREST. No. LXXIII.

#### ASSIGNMENT BY INSOLVENT DEBTOR.

The following case decides a new point. In *Herbert v. Wilcox*, 6 Bing. 203, it was decided, that a voluntary payment by an insolvent to a creditor, within three months of the imprisonment, was fraudulent, within s. 32 of 7 G. 4, c. 57; and in *Sharpe v. Thomas*, 6 Bing. 416, that a warrant of attorney, given by one who intends to take advantage of that act, is a charge on lands under the same section.

In the case we refer to, the insolvent went to prison on the 13th of April; sold his fixtures in question to the defendant on the 14th; on the 18th his estate and effects were assigned to the provisional assignee, and in the following October to the plaintiff, as permanent assignee. If the property in the fixtures in question, passed to them by relation, from the 13th April, the first day of the insolvent's imprisonment, the defendant on the 14th purchased, not the goods of Barnard, but the goods of the plaintiffs. The eleventh section directs a conveyance in the following words:—"That such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said Court, in such form as is to this Act annexed, of all the estate, right, title, interest, and trust of such prisoner, in and to all the real and personal estate and effects of such prisoner; which conveyance and assignment so executed as aforesaid, shall vest all the real and personal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid under the said provisional assignee."

"If the whole," said *Tindal, C. J.*, "had turned on this section, there is nothing in it to shew that the conveyance is to be more operative than any conveyance between ordinary parties. Unless, therefore, some other clause shew an intention on the part of the legislature, that the conveyance should have a relation back, it passes no more than the insolvent passed at the time. It is said, that the use of the word *prisoner*, implies that the assignment



should pass whatever he possessed at the time he became a prisoner; but the word prisoner is used only to identify the person, and not to give a retrospective effect to his acts. It is said, that under the 63d section of the Bankrupt Act, by which the commissioners are authorized to assign "all the *present* and future personal estate of such creditor," every thing passes which the bankrupt possessed from the time of the act of bankruptcy, provided it were not more than two months before the commission; and that a *portion*—all that the insolvent possessed at the time of the imprisonment, ought to pass to his assignees by virtue of the corresponding section of the Insolvent Debtors' Act, which is not qualified even by the word *present*. However, the relation to the act of bankruptcy, in the conveyance of a bankrupt's effects, does not depend on sec. 63 of 6 G. 4, c. 16, but on an earlier and more powerful sec., (the 12th,) by which it is enacted, that 'the Lord Chancellor shall have power, upon petition made to him in writing against any trader having committed any act of bankruptcy, by any creditor or creditors of such trader, by commission under the great seal, to appoint such persons as to him shall seem fit, who shall, by virtue of this act and of such commission, have full power, and authority to take such order and direction with the body of such bankrupt, as hereinafter mentioned, as also with all his lands, tenements, and hereditaments, which he shall have in his own right before he became bankrupt, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, or to make sale thereof in manner hereinafter mentioned.' The 63d section, therefore, can have no other effect, than to enable the assignees to exert the same retrospective power, which the Chancellor is authorized by sec. 12 to confer on the commissioners; but no such power is conferred by sec. 11 of the Insolvent Debtors' Act. It is there said, that by the 16th section of the Insolvent Act, 'it shall and may be lawful for the provisional assignee of the said Court, to take possession himself, or by means of a messenger of the said Court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition, and execute such conveyance and assignment as aforesaid: and that it shall be lawful for the said provisional assignee to sue in his own name, if the said Court shall so order, for the recovering, obtaining, and enforcing of any estate, debts, effects, or rights, of any such prisoner.' That, however, does not carry the point any further than the 11th section.

"But it is said, that if we fail to adopt the construction put on the act by the plaintiffs, we shall occasion a manifest inconsistency between the 30th and 32d sections, inasmuch as under the 30th section, the assignees would be entitled to property of third persons, of which the insolvent might have the apparent ownership at any time during his imprisonment,

while they would not be entitled to property of his own, if he made away with it at any time before the date of the assignment. In answer to this, it is sufficient to observe, that the words of sec. 30 are, 'that if any person who shall petition the said Court for his or her discharge from imprisonment under this act, shall, at the time of his or her arrest, or other commencement of such imprisonment, by the consent and permission of the true owner thereof, have in his or her possession, order, or disposition, any goods or chattels, whereof he or she had taken upon him or her the sale, alteration, or disposition, as owner, the same shall be deemed to be the property of such prisoner so petitioning,' so as to become vested in the provisional assignee of the said Court, by the conveyance and assignment executed in pursuance of this act; thereby expressly referring to the commencement of the imprisonment. We then come to sec. 32; this enactment would have been superfluous, if, according to the construction contended for by the plaintiffs, the property were vested in the assignees retrospectively from the first day of the imprisonment, and may, therefore, be considered as a legislative declaration, that it was not intended the property should vest. I think, therefore, that under the Insolvent Debtors' Act, there is not that relation to the first day of the insolvent's imprisonment, that there is under the Bankrupt Act, to the act of bankruptcy. It follows, that the sale to the defendant was not a sale by the agent of the assignees, but a sale by the insolvent, against which the defendant is entitled to set off whatever may be due to him from the insolvent; and consequently, this rule must be discharged."

*Sims v. Simpson*, 1 Bing. 306.

## GRIEVANCES OF THE PROFESSION.

### THE SIX CLERKS' OFFICE.

*To the Editor of the Legal Observer.*

Sir,

I HAVE derived much instruction and amusement from the perusal of your miscellany, and having at times observed the insertion of articles detailing the grievances under which my branch of the profession labors, it has occurred to me that the subject of this communication may not be unacceptable as a means of drawing attention, with a view to its abolition, to a public office of which I believe all solicitors more or less have had reason to complain.

I allude to the Six Clerks' Office, and more particularly to the sixty clerks there, and their agents. In the course of my business, I happen to have had occasion to resort to a clerk in court, and against whom it is but right to say I have no personal complaint to make, except so far as perhaps his love of leisure may have prevented that proper control and superintendence of his immediate agents and clerks, the want of which may have given rise to that of

which I have to complain. I was the solicitor for the defendants in a suit in which a commission to examine witnesses had issued, under which many of the witnesses had been examined in the long vacation, and publication was to pass on the first seal before the then following Michaelmas Term. I was unable to obtain from counsel the further interrogatories for the examination of the remaining witnesses, and consequently, on the 31st October, the first seal, I moved for and obtained the common *ex parte* order to enlarge publication to the end of the term, and on the same day the motion paper was left at the register's office. Application was there made for the order on the 1st, 2d, and 3d November, on the last of which days it was obtained and left to be entered, and my clerk in court was then apprised of it, when he stated it was too late, as publication had passed on the 1st November. I consequently had to make a special application to enlarge publication, and succeeded upon payment of about 30*l.* costs. In opposition to the motion, it was sworn, "that the plaintiff's attorney, on the 31st October, called at the seat of my clerk in court, and acquainted his agent that he, the plaintiff's attorney, should attend at the Six Clerks' Office on the following day, to see the depositions opened." And what I complain of in this instance is, that my clerk in court neglected to apprise me of this appointment, and which if he had done, all the difficulty and expence I became involved in by publication passing prematurely, would have been prevented. I will not say it was known that further witnesses were to be examined, and my clerk in court's conduct therefore the less excusable, as I am unwilling to advance any fact which has not been sworn to distinctly, or come within my own knowledge.

Now, Sir, I think I have been told that the great facility afforded in serving warrants and notices in this office, is abundant reason why the searching eye of reform should avert its glance from the Six Clerks' Office, and the solicitors be still doomed to pay the gentlemen having seats there large sums annually out of their own or their suitors' pockets, literally for doing nothing in many instances; but smarting under the above loss, which could not have happened if I had been made acquainted, instead of the clerk in court, with the appointment to open the depositions, I cannot but hope that the sinecurists may be lopped off, particularly as I am told there is no remedy against the clerk in court, whatever may be the consequences for omitting to forward the notices left at his seat. I have several other very serious complaints to make, which shall be the subject of future letters, if you think the matter of the present worthy of insertion.

A SUFFERER.

## REVIEW.

*The New Rules of Pleading, with Notes and Observations, and Decided Cases to the end of Michaelmas Term, 1834. With the addition of Precedents adapted to, and a General View, under each head, of all the Alterations in Pleading made during the present Reign.* By S. R. Bosanquet, Esq. of the Inner Temple, Barrister at Law. Maxwell, London.

HAVING ourselves published an edition of the New Rules on Pleading, with Notes explaining the objects and effect of the alterations, as appended to the Practice of the Superior Courts of Common Law, we are somewhat disqualified from criticizing the present work. It is but justice, however, to state the plan and nature of Mr. Bosanquet's publication, as collected from his preface.

"I have (he says) brought together and arranged the forms and precedents most necessary for general use, immediately founded upon the new regulations. The order has been followed which is adopted in Mr. Chitty's precedents; and at the head of each title will be found collected notices of all the changes which have been made in that particular branch: so that, with Mr. Chitty's book before him, and the present volume opened at the corresponding title, the practitioner will be able to draw any pleading with readiness and facility.

"In the exposition of the rules themselves, no point has been left unnoticed on account of its doubtfulness and difficulty; and no matter has been introduced but such as appeared to be either useful or curious. It was felt that in some matters and distinctions which must soon be wholly lost and forgotten, a short notice of the former practice, and of the change which has been effected, might be a matter of no little curiosity and interest at the moment of the change, and even to a distant period. No pains have been spared in collecting the opinions of the profession independently of my own experience. The 2nd Common Law Report, upon which the present changes are principally founded, has been sedulously consulted, and references have been made to those places which seemed to throw light upon the authorised regulation; and that which seemed to be directly useful has been quoted. Very considerable deviations, however, have been made from the recommendation of the Report; as for instance, in the method of dealing with variances, the effect given to the plea *non assumpsit*, and in forms of pleadings given by authority as examples; independently of the subjects which have been wholly omitted, and which remain for future regulation. I venture the observation, that the forms given and recommended in the above mentioned report, are too concise for true logical perspicuity and precision. Pleadings had gone to the opposite ex-

treme by means of over-caution, combined with inattention, and through the practice of relying upon pupils and precedents. It is hoped that the common law pleading is again fast attaining to that "perfection, without lameness and curiosity, to which," says Lord Coke, "it had attained in the reign of Edward 3, when the serjeants drew their own pleadings, and before the time when the judges gave a quicker ear to exceptions than their predecessors."

Amongst the notes which appear to be valuable is the following, on the alteration effected by the New Rules as to several counts or pleas on the same subject-matter.

"The penalties for the non-observance of the fifth general rule, imposed by the sixth and seventh general rules, ought to be clearly understood, since they are such that the party succeeding upon the trial may, if the Judge so thinks fit, be deprived of his *whole costs* upon all the issues, even those upon which he succeeds.

"Already by rule 74 of Hil. T. 2 W. 4, 1832, (8 Bing. 299) the plaintiff must pay *all* his own and the defendant's costs upon any counts or issues upon which he does not succeed; but by the sixth and seventh of these rules, if the counts upon which he succeeds are the same in matter as any of those upon which he fails, he may be deprived of all his own costs upon them, if the defendant has taken the precaution to make the application to a judge pointed out by the sixth rule.

"The same with respect to several pleas, &c. founded on the same matter.

"In *all cases*, therefore, where it is probable that this will prove to be the case, the party should put himself in a situation to obtain this advantage by certificate after the trial, by taking out a summons and getting it indorsed in the manner prescribed.

"Attention to the operation of the sixth rule is necessary to the understanding of the seventh.

"The course of proceeding then will be this:—

"An application to a Judge under the sixth rule, made by the defendant, for instance, should suggest, that two (or more, or all, as the case may be) of the counts in the declaration, specifying them, are founded upon the same subject-matter of complaint, and require that the plaintiff may show cause why all the counts introduced in violation of the fifth rule of the general rules and regulations of Hil. T. 4 W. 4, should not be struck out at the cost of the plaintiff

"If the Judge shall be of opinion that any of the counts are in violation of the rule, he will order the same to be struck out accordingly.

"But if upon cause shown, he shall be satisfied that a distinct subject-matter of complaint is *bona fide* intended to be established in respect of *each of such counts*, (that is, each of the counts specified in the summons), he will indorse upon the summons, or state in his

order that he is satisfied that a distinct subject-matter of complaint is *bona fide* intended to be established in respect of the first, second, and third counts (as the case may be), specifying such of the counts mentioned in the summons as he allows.

"A declaration, for instance, may consist of several counts, of which the two first may be founded on entirely distinct subject-matters of complaint, and the three following counts may be founded upon a third subject-matter of complaint, varying from each other in statement only. In such case the application to the Judge should suggest that the three last counts are founded on the same subject-matter of complaint. If the Judge should be satisfied that the third and fourth are founded upon distinct subject-matters, but that the fifth is founded on the same subject-matter as the fourth, he will order the fifth to be struck out, state that he is satisfied that the third and fourth are founded on distinct subject-matters, and allow them.

"If the application to the Judge is made also with respect to the two first counts, the Judge, being satisfied, will indorse his allowance of all the four first counts.

"The consequence of this will be, that if at the trial the plaintiff should establish the third but fail on the fourth for *want of shewing a distinct subject-matter of complaint*, (and which he *must* do in that case by the first part of the 7th rule), or *vice versa*, and the Judge shall certify accordingly, he will not only have to pay *all* the costs occasioned by the count on which he fails, but will receive no costs upon any issue or issues arising out of the other count to which the Judge's certificate applies.

"The costs occasioned by the first and second counts will abide the event of the trial with regard to them respectively.

"If, however, the plaintiff should succeed in establishing only one subject-matter of complaint in respect of the two first counts also, and should fail upon one of them accordingly, though this subject-matter be distinct from the matter of the third count, (and the Judge should so certify), he will lose his own costs upon *all* the issues, though he recover a verdict upon two or more of them.

"It must continually be borne in mind, that this rule is expressly founded upon the greatly enlarged powers of amendment given by the statute of 3 & 4 W. 4, c. 42, s. 23, and that full and liberal effect will be given to that statute, without which this rule would have too severe an operation."

There are also several notes to the plea of *non assumpsit*, on part of which we have an observation to make.

"In actions by *attorneys*, the words of the statute 2 G. 2, c. 23, s. 23, are, 'No attorney shall commence or maintain any action or suit for the recovery of fees, &c., until the expiration of one month after the delivery of his bill. It is apprehended that this defect may be still taken advantage of without being pleaded;

for it is neither a matter in *discharge*, nor one which renders the transaction *void* or *avoidable*, nor is it any way in *confession* and *avoidance* of the contract; but it is a mere statutable disqualification from bringing the action. It is rather in the nature of a disqualification from entering into the proof of *value*, a matter which, as well as *quantity*, is clearly in issue under the plea of *non assumpsit*, and without proof of which the plaintiff cannot recover any thing.

"In *Moore v. Boulcot*, however, 5 Moore & Scott, 122, this defence was pleaded, and it is the safest course to plead this and all the above mentioned defences, since the most liberal effect will be given to the rules; and it *may* be said, that since this rule any other plea in bar waives all these objections, and *consensus vincit legem*."

We cannot agree that it is necessary to prove the delivery of a signed bill, in an action by an attorney to recover his costs, where the defendant has pleaded the general issue only. The words of the rule are, that "in all actions of *assumpsit*, (except on bills of exchange and promissory notes,) the plea of *non assumpsit* shall operate only as a denial of the fact of the *express contract* or promise alleged, or of the matters of fact from which the contract or promise alleged may be *implied* by law." Now in an action for an attorney's bill, the "*express contract*" will be proved by a retainer either written or verbal, or "*implied*" from such facts as shew that the client knew and approved of the proceedings on his behalf. Proof must also be given of the *quantum* of business transacted under the retainer, and the reasonableness of the charges, without which the jury could give only nominal damages. What more can be necessary under the terms of the rule? If the defendant has really received no signed bill, or if he has any defence to the whole or part of the demand, he must, we think, according to the words as well as the obvious intent of the rules, plead the matter specially. Even according to the old practice, a defendant might plead the want of a signed bill, although he could also give it in evidence under the general issue. See 3 Keb. 118, 514; Raym. 245; 3 Salk. 19, S. C.; 1 Show. 48; Comb. 126, S. C.; 1 Show. 338; Bull. N. P. 145; and by the late case in 5 Moo. & S. 122, the propriety of the plea is established, which, if it were unnecessary, ought scarcely to have been the case, inasmuch as the rules are intended to prevent needless issues on the record, whereby the amount of the costs of a trial are in various ways diminished. The proof of the delivery of a signed bill in the manner required by the

statute, would frequently involve the necessity of bringing a witness from a distance. It cannot be doubted, therefore, that it was intended by the rules to avoid the expense unless the fact should be really disputed.

Neither can we admit that the words of the rule requiring that "all matters in *confession* or *avoidance* should be specially pleaded," do not include the case in question. It is true that the nondelivery of the bill does not affect the validity of the contract, but only prevents its being enforced in that action. Still it operates, in a liberal sense of the term, in "*avoidance*" of the action, and the instances given in the rule are expressly intended merely in the way of illustration, and not as comprehending all the cases to which the rule is applicable. The conclusion at which Mr Bosanquet arrives, on an examination of the particular examples given in the rule, seems to have been expressly provided against by the concluding terms of the 5th rule, viz. that "the examples in this and other places specified are given as some instances only of the application of the rules to which they relate; but the principles contained in the rules are not to be considered as restricted by the examples specified." We conceive, therefore, that under the general rule as to *non assumpsit*, that it "shall operate only as a denial in fact of the contract," and that "all matters in *confession* or *avoidance* shall be specially pleaded," the non-delivery of a signed bill is clearly included.

This view of the question, is, we think, confirmed by what is expressly directed in the rules relating to Bills of Exchange and Promissory Notes, where the plea *non assumpsit* is rendered inadmissible, and the plea in denial must traverse some matter of fact, *ex. gr.*, the drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note. Here the want of consideration is not specified; yet the author himself, properly construes the rules to require it to be pleaded.

"Accommodation also must now be pleaded specially according to the following section of the rule; and it is to be observed, that it is not there directed that *want of consideration*, but that *accommodation* shall be pleaded. Such then, it is conceived, ought to be the form of the plea, viz. the defendant should *affirmatively* allege that the bill or note was given for accommodation, and that the plaintiff should reply negating this allegation.

"If the defendant should plead that 'no consideration was given,' he ought properly to conclude with a verification; 1 Saund. 103 a, n. (3); Steph. Pl. 251, 439 (edit. 1824); though perhaps he *may* conclude to the country, Co. Litt. 303 a; 1 Show. 338. The consequence

of verifying such a plea would be that the plaintiff would be compelled to reply, stating specifically the consideration of the bill; and if this were to become the practice, the negotiability of bills and notes would soon be effectually destroyed. On this account it is, it may be presumed, that the rule directs that the 'accommodation' shall be pleaded.

"The effect then of the present regulation is merely to substitute a plea in lieu of the former notice to prove consideration, and no more. The burden of proof will still lie upon the defendant, to the same extent as formerly upon notice given. Also in actions by an indorsee or bearer, the defendant having first proved under a proper plea that the bill was originally given for accommodation, or was subsequently lost or stolen, the same rule as formerly will still prevail, that the holder should then prove how he became possessed of it. *Thomas v. Newton*, 2 C. & P. 606; 3 Burr. 1516, 1527; 1 Camp. 100; 2 Camp. 5."

## SELECTIONS FROM CORRESPONDENCE.

No. XCI.

### DEVISE, EXECUTORY OR CONTINGENT.

Sir,

I disagree with "I," p. 223, in his communication on this subject, inasmuch as he excludes the child of Mary from taking immediately on her forfeiture. There is no doubt, but that upon an ordinary limitation by way of remainder, to a class, as children, &c., all who are *in esse* at the time of the death of the testator, take *vested* (and consequently transmissible) interests immediately upon the testator's death; and that all who come *in esse* before the particular estates end, and the limitation takes effect in possession, are to be let in and take a vested interest as soon as they come *in esse*, and that they and their representatives will take as if they had been *in esse* at the testator's death. This is settled by *Baldwin v. Carver*, Cowp. 309; *Roe v. Perryn*, 3 T. R. 484; *Doe v. Duvell*, 5 T. R. 518; *Meredith v. Meredith*, 10 East, 503; and *Right v. Creder*, 5 B. & C. 866. There is no doubt also, but that a limitation by way of remainder to such children, &c. as shall be *in esse* at the time when the particular estate ends, and the remainder is to take effect in possession, is a contingent remainder, because it depends upon the event of any such children continuing *in esse* until the particular estate ends. This is clear, from *Roe v. Briggs*, 16 East, 406.

It is admitted in this case, that Mary had a son at the time she committed a forfeiture of her life estate; and the only question can be, whether there is now any person who can claim under the words, "and after her decease, to her eldest child then living;" and I maintain that the eldest child living at the time of such forfeiture is entitled to take, on

the ground that the Courts hold the words "after decease" (in favour of vesting an interest), to mean no more than "after the determination of the preceding estate." "It is a settled rule, not to read a limitation in a will as being a contingent remainder, unless such appears clearly to have been the intention of the testator; but if it will admit of being considered as a vested remainder, the Court will always read it as such; because a contingent remainder is always liable to be defeated, and the intention of the testator thereby frustrated." *Per Bayley, J.*, 12 East, 604.

How far the Courts would put the construction contended for, will appear from the following cases. In *Hodgson v. Ambrose*, Doug. 340, Lord Mansfield held that the words "and for want of such issue," mean the same thing as "and after such estate tail;" and adds, "and this is the common case of a remainder after an estate tail, when if the first estate never takes place, the remainder vests in possession immediately." In *Doe v. Nowell*, 1 M. & S., testatrix gave her real estates to her nephew for life: "and on the decease of my said nephew, I devise all my said estates to and among his children lawfully to be begotten, equally, at the age of twenty-one, and their heirs, as tenants in common: but if only one child shall live to attain such age, to him or her and his or her heirs, at his or her age of twenty-one; and in case my said nephew shall die without lawful issue, or such lawful issue shall die before twenty-one, then over." The nephew levied a fine and suffered a recovery, having at the time several children, but infants; and the question was, whether the children took a vested interest before twenty-one; which the Court decided they had, subject only to be divested in case of dying under twenty-one: and this case was affirmed in the House of Lords. 5 Dow. 202. In *Bromfield v. Croudson*, 1 N. R. 313, testator devised all his real estate to *E. D.* and *J. R.* for their lives successively; and after the decease of the longest liver of them, to *J. D. B.*, if he lived to attain the age of twenty-one, but not otherwise; and in case he died before that age, then over. Both *E. D.* and *J. R.* died while *J. D. B.* was under age. The Judges were unanimous that *J. D. B.* took a vested estate in fee simple, determinable on his dying under twenty-one.

The case of *Denn v. Bagshaw*, 6 T. R. 512, may be mentioned as strongly resembling the case in dispute. There a testator gave to his daughter all his lands in a certain parish, for and during the term of her natural life; and from and immediately after her decease, to the first son of her body, if living at the time of her death, and the heirs male of such first son; and for default of such issue, to the second son of her body, if living at the time of her decease, and the heirs male of such second son, with the ultimate remainder to *J. B.* The eldest son died in his mother's lifetime, leaving a son; and on the mother's death, *J. B.* entered: and the question was, whether the grandson could claim; and the Court held

not, as only being able to claim through his father by descent, and he having died in his mother's lifetime his estate had lapsed. To entitle *J. B.* to claim, it was requisite that the Court should construe the words "and for default of such issue," to mean no more than "after the determination of the preceding estate;" otherwise *J. B.* could never have taken, if the grandson had been living at the determination of the particular estate (which was the case); and this construction we see was put on the words, although one of the parties intended to be benefited was thereby excluded. Nothing appears in this case in opposition to the position, that the eldest son took a vested interest at his birth, subject to be divested in the case of his death in his mother's lifetime (which happened); nor is there any thing in the case to shew, that had the mother committed a forfeiture, the eldest son might not have entered. Mr. *J. Ashurst*, in his judgment, p. 517, says, "The son of Margaret (the mother) could only take in the event of his surviving his mother." Nothing more could be meant by this, than that the son could only take in possession in the event of his surviving his mother. Neither Mr. *J. Ashurst*, nor any of the other Judges, were called upon to give any opinion as to whether the son took a vested interest, as according to the circumstances there was no occasion so to decide. And as we have already, in *Doe v. Nowell*, shewn that the Court holds such an interest vested subject to be divested, it is not too much in this case to hold, that the limitation in the present case would be read as if it had been, "and after the determination of such estate, to her eldest child then living." The above remarks will equally apply to the answer given by your correspondent "*Spec.*" p. 239. T. O. B.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### RIGHTS OF THE CROWN.—ILLEGITIMACY.

*The personal property of an illegitimate woman, settled on her marriage, on herself for life, with power of appointing it absolutely in default of issue, and in default of such appointment, then to go to her next of kin, will, in these events, go to the husband, who survives and administers, as against the crown.*

A question as to the rights of the crown, arose incidentally in this suit, under these circumstances. A lady, who was taken to have been illegitimate, being about to contract a marriage, settled her property upon trust, for herself for life, remainder to her intended husband for life, remainder to the issue of the marriage; and in the event of there being no such issue, then to herself absolutely, if she

should survive the husband, but if she should not so survive, then to any person appointed by her, by deed or will; and in default of such appointment, then to her next of kin, to be distributed according to the statute, as if she died unmarried. The marriage was duly performed, but the lady died without leaving issue, and without exercising her power of appointing, leaving her husband her surviving. He took out letters of administration of her effects, and in that right he claimed the settled property absolutely.

Mr. *Knight*, in support of the husband's right, suggested, that the limitation to the next of kin, was a slip or mistake relating to the lady's condition; she having the reversionary interest in the property in default of issue, and no next of kin, the property went to her husband, the administrator, absolutely.

The *Solicitor General* and Mr. *Wray*, on behalf of the crown, contended, that in default of appointment, and of next of kin, the property fell under the principle of *bona vacantia*, and therefore, properly belonged to the crown, after the life interest of the husband.

His Honor, the *Vice Chancellor*, decided in favor of the husband. The crown could not establish a claim to personalty, against the husband of an illegitimate woman, and the husband had established his title to it, by taking out letters of administration to his wife.

*Hawkins v. Hawkins*, M. T. 1834.

### Rolls Court.

#### LIABILITY OF TRUSTEE.

*Circumstances in which a trustee was declared liable to replace a trust-fund, lost by his co-trustee, to whom he gave the whole management of it.*

This suit was instituted in behalf of the issue of a marriage, against the father and the surviving trustee, to compel the latter to replace the trust-fund. The following is a short statement of the circumstances, as collected from the pleadings and evidence in the cause. By indentures of settlement, executed on the marriage of Joseph Cole and Ann Chubb in 1801; a sum of 1100*l.*, the fortune of Miss Chubb, was vested in a person of the name of Elworthy; and in the defendant Little, as trustees, to be by them laid out in public or private securities, and held in trust for the sole use of the intended wife for life, with remainder to the husband for life, subject to the power of appointment by the wife in favor of the children of the marriage, and with remainder in default of appointment among the children of the marriage, who should attain the age of twenty-one years. The defendant Little, at the same time joined in a receipt for 600*l.*, which was endorsed upon the marriage settlement, although, in fact that sum, together with the residue of the 1100*l.*, was paid to Elworthy, and no part of the trust-fund was ever received by Little; El-

worthy never invested the money according to the direction of the settlement, but he continued to pay the interest of the fund to Mrs. Cole down to the year 1809, when she died, leaving two children, the present plaintiffs, and the only issue of the marriage. In November 1810 Mr. Elworthy became a bankrupt, and under his commission a proof was made by his co-trustee Little, in respect of the trust money, and a sum of 60*l*. was thereupon directed to be paid into Court by the assignee, on account of the debt so proved. No further proceedings were had till after the death of Mr. Elworthy, when the children having come of age, the present bill was filed by them, for the purpose of charging the surviving trustee with the loss.

Mr. Pemberton contended, that the defendant had clearly made himself liable, inasmuch as he had executed the trust-deed, and had, moreover, by the receipt which he had signed for the 600*l*., distinctly admitted, that the fund had to that amount come into his hands. It was his duty to have seen it properly laid out and applied according to the directions of the settlement; that duty he had neglected to perform; and however severe the penalty might seem, he must now suffer the punishment of his neglect.

Mr. Bickersteth, for the defendant, Little, submitted, that, as in point of fact, not a farthing of the trust money had ever been received by Mr. Little, who had incautiously, and for the sake of conformity, merely joined in the receipt of the 600*l*., he ought not now to be held responsible for any part of it. The evidence of Edward Chubb, in whose hands the fortune was placed at the time of the marriage, and by whom it was subsequently paid by several instalments to Elworthy, who was the confidential solicitor to the Chubb family, sufficiently establishes the fact, that no part of the funds ever reached the hand of Little, and that he never in any way interfered with the management of the trust. If, however, the receipt, though signed for the sake of conformity, was to operate as a binding admission against him, it was, at any rate, impossible to charge him with a greater sum than appeared from that document to have come into his hands.

The Master of the Rolls said, the testimony of Edward Chubb, supposing it material, was inadmissible, for he had a direct interest in relieving himself from liability, by proving that the payments which he had made to Elworthy, were not made in fraud of the settlement. Mr. Little was one of those unfortunate persons, who think that trustees have no duty to perform. He might have had a good defence by proving, that Mr. Chubb had allowed the money to get into Elworthy's hands, although he knew it was the subject of settlement; but such defence could only be successfully made by a bill in the nature of a cross bill. When a trustee signed a trust-deed, like the one in question, he took upon himself the duty of receiving and applying the trust fund according to the declared trusts; and by signing a receipt

for the money, he admitted that the money was within his power and controul. In truth, however, there was no distinction to be made, between the sum for which the acknowledgment was given, and the rest. By becoming an executory party to the settlement, he undertook to perform the trusts which it created, and it was his duty to have faithfully performed them; but instead of considering that he had imposed a duty on himself, he never attempted to discharge the trust, but left the care of the property to chance, and the consequence was, its total loss. Under these circumstances, the defendant was bound to replace the whole sum, which had been lost through his negligence; and the decree must, therefore, be made against him, with costs.

*Wheeler v. Little and another*, at the Rolls, July 4, 1834.

#### VENDOR AND PURCHASER.—VENDOR'S LIEN.

*Doctrines of the Court in respect to a vendor's lien for the purchase-money on the estate sold; and circumstances in which that lien is held to be discharged by the vendor accepting a bond conditioned for payment in a way different from that mentioned in the deed of conveyance.*

This bill was filed for the specific performance of a contract for the sale of an estate, situate in West-Teignmouth, of which the plaintiff, Mr. Jaspar Parrott, was tenant for life, subject to a mortgage for 5,000*l*., and his daughter, Sophia Parrott, was entitled to the reversion in fee, subject to the said mortgage, and to the father's life interest. In 1831, Sophia Parrott, being then of full age and about to contract a marriage with a Mr. Orlebar, agreed to sell her reversion to her father for the sum of 3000*l*., and that sum was to be secured for the benefit of the husband and wife and the issue of the marriage, by the bond of Mr. Parrott, the father. In pursuance of this agreement, deeds, dated the 4th and 5th of May, 1831, were executed, by which Sophia Parrott conveyed the reversion in fee to her father; and it was recited that the conveyance was made "in consideration of the loan of 3000*l*., advanced or secured or agreed to be advanced or secured, to Sophia Parrott." The deed also contained the usual acknowledgment of the receipt of consideration money. A bond was executed by Mr. Parrott, in the penal sum of 6000*l*., conditioned to be void upon the payment of certain annuities and other sums for the benefit of the husband and wife, and the issue of the marriage, and upon other conditions in certain events therein mentioned. In September, 1832, Mr. Parrott contracted for the sale of the estate to the defendant, for the sum of 9,050*l*.. The defendant objected to the completion of the purchase unless security were given for the performance of the conditions mentioned in the bond, alledging that Mrs. Orlebar retained her *lien* upon the

land for the performance of the conditions. The plaintiff declined giving such security, insisting that his daughter had waived her *lien* by accepting the collateral security. The main question in the cause was, whether the acceptance of that security was or was not a discharge of the vendor's *lien*. The receipt on the back of the conveyance from Mrs. Orlebar to her father, was not for the sum of 3,000*l.*, but for a bond conditioned for a payment of that sum.

The question was argued by Mr. *Pemberton* and Mr. *Preston* for the plaintiff; Mr. *Bickersteth* and Mr. *Shopter* for the defendant.

*The Master of the Rolls*.—In the very laborious and luminous judgment given in the case of *Mackreth v. Symmons*<sup>a</sup>, Lord *Eldon* examined all the principles and authorities applicable to cases of this description. The only case in which those principles have not been acted upon is, that of *Winter v. Lord Anson*<sup>b</sup>, decided upon appeal from this Court, which I do not, however, feel myself bound to follow. That is a singular case, in opposition to the clear principles of Lord *Eldon*, after a most laborious investigation and luminous exposition. The question is, what is meant by the doctrine of a Court of Equity, that a vendor has a *lien* for the purchase-money upon the estate sold? A *lien* for what?—for the consideration stated in his conveyance. If a collateral security be given for the consideration stated in the conveyance, it certainly does not discharge the vendor's *lien*, but is merely a further and additional security for that consideration. But if the collateral engagement be not a security for the consideration stated in the conveyance, but in satisfaction of it, how can the *lien* possibly remain? The result of the doctrine laid down by Lord *Eldon* is, that where a collateral security is given for the performance of the consideration stated in the conveyance, it does not discharge the *lien*, but gives a further remedy to the vendor; it does not release the party from the engagement into which he has entered by the conveyance. Applying this principle, therefore, to the present case, the question is, whether this collateral engagement is a mere security for the performance of the consideration stated in the conveyance, or is an engagement for doing something in satisfaction of that consideration. If it stipulates to do any thing inconsistent with the consideration stated in the conveyance, the *lien* is discharged, and it becomes a case of satisfaction. If a party agrees by the conveyance to receive a certain sum of money, and by a collateral and distinct engagement agrees not to receive that sum of money, but to accept a satisfaction for the consideration stated in the conveyance in another mode, how can he be said, upon any principle of reason, to retain his *lien*? Here the purchaser engages to

pay 3000*l.*, the conveyance containing the usual acknowledgment of the receipt of that sum; a collateral security on the part of the vendee to pay the money would not discharge the *lien*, but give an additional remedy to the vendor. But an engagement that he shall not pay that sum of money, but the interest only, during the lives of certain parties, and upon certain events to pay different sums or no sum at all, which is to happen in one event, is an engagement on the part of the vendor to accept a distinct satisfaction in discharge of the consideration stated in the conveyance. No person who applies himself to the examination of this subject, can doubt the soundness of the conclusion to which Lord *Eldon* arrived. There is in this case, moreover, a circumstance of great strength, namely, that although the vendor, in the body of the conveyance, states himself to have received 3000*l.*, yet upon the back of the conveyance there is a receipt for a bond which is considered by the vendor as a satisfaction of the engagement entered into in the body of the conveyance. The case of *Winter v. Lord Anson*, decided by Lord *Lyndhurst* upon appeal, was carried to the House of Lords, but the appeal was not prosecuted. Had it been a decision even of the House of Lords, I should not have followed it, because it is inconsistent with the whole current of authorities, and contradicts the principles which have been so clearly established by Lord *Eldon*, and approved of by other Judges. My opinion is, that this purchaser must take the title, the defendant's estate being exonerated from all liability in respect of the daughter's *lien*.

*Parrott v. Sweetland*, at the Rolls, July 7th, 1834.

### King's Bench.

[Before the four Judges.]

#### SHEWING CAUSE.—TAKING OFFICE COPIES OF AFFIDAVITS.

*It does not appear to be necessary to take office copies of affidavits in support of an enlarged rule.*

It being attempted to shew cause against an enlarged rule *nisi*, it was objected, as a preliminary objection, that office copies had not been taken of the affidavits on which the rule had been enlarged.

The Court (after consulting the Clerk of the Rules) thought that as according to the modern practice it had not in all cases been held necessary to take such copies, it would not be required in the present instance.

Cause then was shewn, and the rule ultimately discharged.

Rule discharged.—*Foy v. Pitt*, H. T. 1835. K. B. F. J.

<sup>a</sup> 15 Vesey, 329.

<sup>b</sup> 1 Sim. & St. 434. The case upon appeal is not yet reported; but the decision was reversed by Lord Chancellor *Lyndhurst*.



MIDDLESEX COUNTY COURT ACT.—COSTS.—  
DEMURRER.—PLEA.

*If defendant is indebted in the amount of 40s. only, and is resident in the county of Middlesex, and liable to be summoned to its County Court, those facts cannot be pleaded as a defence in the superior Courts.*

Demurrer to a plea. The action was for work and labour done, and the defendant pleaded that the cause of action, if any, amounted to a less sum than 40s., and that he at the time the action was commenced resided in the county of Middlesex, and was liable to be summoned to the County Court of the said county.

In support of the rule, it was contended, that it was clearly shewn by 6 Edw. 1, c. 8, the Statute of Gloucester, that where the cause of action amounts to less than 40s., the action cannot be brought in the superior Courts. The 23 G. 2, c. 33, cannot be considered as repealing the Statute of Gloucester.

In support of the demurrer, it was submitted, that the Statute of Gloucester did not entitle the defendant to plead the fact of the plaintiff's claim amounting to no more than 40s. in answer to an action for a sum which he (the defendant) alleged did not exceed 40s. The Statute of Gloucester must be considered as repealed by the Middlesex County Court Act.

*Per Curiam.*—The Middlesex County Court Act certainly repeals the Statute of Gloucester for this purpose. From the provisions contained in sec. 19 of the former act, with respect to the penalty of costs, where the cause of action does not amount to 40s., it is clear that an action may be brought for such a sum in the superior Courts. The plaintiff could not be liable to costs under this section, unless he had brought his action in the superior Court. This having been done, the penalty is provided by this section, and the defendant should avail himself of this remedy given by the Middlesex County Court Act. Besides, the plea is defective in point of law. It is provided by the above section, that in certain excepted cases the action may be brought in the superior Courts, although the sum recovered is under 40s. It should have been shewn, therefore, that the cause of action in the present case was not one of the excepted instances.

Judgment for the plaintiff.—*Sandall v. Bennett*, M. T. 1834. K. B. F. J.

**King's Bench Practice Court.**

## JURISDICTION OF THE LAW COURTS.—SPECIAL AGREEMENT.

*In what cases the Court cannot interfere to set aside a regular execution issued in pursuance of an agreement between the parties in a cause.*

This was an application to set aside a writ of execution sued out by the lessor of the plaintiff in this cause, which was an action of

ejectment, under these circumstances. The plaintiff had taken the cause down to the assizes for trial, when the parties agreed that the plaintiff should be nonsuited for want of the defendant's appearing to confess lease, entry, and ouster, and that the defendant should pay the costs of the action on the 5th of October following; but if he did not, a writ of *habere facias possessionem* should issue. The lessor of the plaintiff did not, however, tax his costs until the 17th of the following month of December, when the defendant was required to pay their amount. This he was unable to do; and afterwards, a week's further time having been given to him, the present writ of *habere facias possessionem* was issued and executed. The present application was made to set aside this execution on any terms the Court should think it right to impose.

*Patterson, J.*, was of opinion, that as the parties had entered into the agreement in question they were bound by it. The Court had, in fact, no jurisdiction for such a purpose. The rule which has been granted in this case must therefore be discharged.

Rule discharged.—*Doe d. Lord Stafford v. Corbett*, H. T. 1835. K. B. P. C.

**Exchequer of Pleas.**ATTACHMENT.—SHERIFF.—COLLUSION.—  
BAIL.—REGULAR JUDGMENT.

*In an affidavit by a sheriff for setting aside a regular attachment against him on payment of costs, it is not necessary that it should be shewn, that he does not collude with the bail.*

A rule nisi had in this case been obtained, for the purpose of setting aside an attachment issued against the sheriff, on payment of costs.

On shewing cause against this rule, the affidavit of the sheriff's officer, on which this rule had been obtained, was objected to, on the ground of its not denying collusion with the bail, but merely stating the application to be made on the officer's behalf, without collusion with the defendant.

*Per Curiam.*—We are of opinion, that the affidavit is quite regular: it is for the plaintiff to shew that he has lost a trial. The present rule must, therefore, be made absolute on payment of costs, with the attachment standing as a security.

Rule absolute accordingly.—*The King v. The Sheriff of Middlesex*, in a cause of *Finlay v. Rallett*, M. T. 1834. Excheq.

PLEADING.—DEMURRER.—VERIFICATION.—  
AWARD AND SATISFACTION.

*If a plea contains allegations of payment as to part of the plaintiff's demand, and a general denial as to the rest, it should conclude with a verification, or it will be demurrable.*

The plaintiff in this case demurred specially

to the defendant's plea, on the ground of its not concluding with a verification, it being a double plea. It appeared, that the declaration was in *assumpsit*. The defendant's plea as to 14s., parcel of, &c., was, that he had paid the same before the commencement of the action, and as to the residue, that he did not promise as alleged in the declaration.

In support of the demurrer, it was contended, that the plea ought to have concluded with a verification, as new matter was introduced. That the payment alleged might have been before the commencement of the suit, but after the contract had been broken; and that there should have been two pleas.

In support of the pleas, it was submitted, that as the general issue was properly pleaded to all, except the 14s., the demurrer was too extensive.

*Parke, B.*—It is not shewn by the plea, that the 14s. were accepted in satisfaction. The manner in which it is pleaded, excludes a replication that the money was not paid when it became due. The whole is pleaded as one plea, and there is one demurrer to the whole. Unless the defendant amends, there must be judgment for the plaintiff on the whole plea.

Judgment accordingly.—*Ansell v. Smith*, M. T. 1834. *Excheq.*

## NOTES OF THE WEEK.

### THE NEW JUDGE.

Mr. Justice Coleridge was sworn into office, and took his seat in the Court of King's Bench, on Tuesday last, the 27th instant.

### LANCASHIRE ASSIZES.

Since the information we communicated in our last number, we learn that the intention is, to commence the Lancashire Assizes at Lancaster, and to adjourn from thence to Liverpool. Some arrangements are, however, yet to be made, before the matter can be decisively fixed.

We shall be glad to hear, that a similar course will be adopted in other large and populous counties, in order that the expense and inconvenience of bringing witnesses from a distance, and keeping them a considerable time, may be in future avoided, according to the object and intention of the act.

### REPEAL OF PROFESSIONAL CERTIFICATE DUTY.

This tax, which was created by 25 G. 3. c. 80, shall be noticed in our next number in the way suggested by a Correspondent.

### NEW REGULATIONS OF THE INNS OF COURT.

It appears that the regulation for calling to the Bar is about to be altered, and that in future the persons applying, besides keeping twelve terms, must be such as have not been engaged in any *trade* or *business* for five years previously. Will this comprise the "business" of attorneys, or only those persons who consider themselves professional men—such as appraisers, house agents, accountants, and others? The latter, we conceive, will be the proper construction of the rule; but we think it should be placed beyond doubt.

## COMMON LAW SITTINGS.

### KING'S BENCH.

*After Hilary Term, 1835.*

MIDDLESEX.		LONDON.	
<i>Common Juries.</i>		<i>Common Juries.</i>	
Monday	Feb. 2	Tuesday	Feb. 3
Wednesday	4	Wednesday	19
and daily to		(the Adjournment day)	
Saturday	7	Thursday	19
inclusive.		<i>Special Juries.</i>	
<i>Special Juries.</i>		Friday	Feb. 20
Monday	Feb. 9	and daily to	
and daily to		Monday	23
Thursday	12	inclusive.	
The 14th, 16th, and		The 24th, 25th, 26th,	
17th of February, for		27th, and 28th, for	
Special or Common		Special or Common	
Juries, or both.		Juries, or both.	

## EXCHEQUER OF PLEAS.

*After Hilary Term, 1835.*

MIDDLESEX.	
Monday	Feb. 2
Wednesday	4
Thursday	5
Friday	6
Saturday	7
Monday	9
Tuesday	10
Wednesday	11
Thursday	12
Friday	13
Saturday	14
Monday	16
Tuesday	17

### LONDON.

Tuesday	Feb. 3	Common Juries.
Wednesday	18	(Adjournment Day), Common Juries.

Thursday	Feb. 19	Common Juries.
Friday	20	
Saturday	21	
Monday	23	
Tuesday	24	
Wednesday	25	Special Juries.
Thursday	26	
Friday	27	
Saturday	28	

The Court will sit at 10 o'clock.

## ANSWERS TO QUERIES.

### Law of Property and Conveyancing.

REAL PROPERTY.—WILL. P. 240.

An answer to J. A. M.'s query may be found in the Introduction to the 10th vol. of Jarman's Continuation of Bythewood's Precedents. He first says that the Statute of Frauds requires a *revocation* to be attested by three witnesses. This point I know has been subject to discussion; but the reasoning of the latter part of the paragraph is so just and apposite, that I should conceive it would entirely set the question at rest. I have extracted it: "If the new devise be ineffectual on account of the attestation being *insufficient for a devising*, though *sufficient for a revoking will*" (which I conceive J. A. M., though perhaps wrongly, imagines to be his situation), "the revoking clause will be inoperative on *another principle*, namely, that the revocation is dependent on, and fails with, the attempted new disposition; the purpose to revoke being considered to be not a substantive independent intention, but subservient to another purpose, for which the instrument is incompetent; the testator meaning to do the one only so far as affects the other. *Eggleston v. Speke*, Carth. 79; 1 Show. 89; *Onions v. Tyrer*, 2 Vern. 441; S. C. 1 P. W. 343." J. O.

STAMP.—LEASE FOR A YEAR. P. 224.

The *ad valorem* on the lease for a year, always depends on the *ad valorem* on the re-lease. The stamp on the lease for a year would therefore be 1*l*. W. T.

JOINT TENANCY. P. 176.

I do not see how there can be any question, but that the whole take as joint tenants. The trust is declared to them generally and jointly, without any restriction. Consequently, there will be a right of survivorship, and no disposition can be made by will of any share, neither will it devolve to the next of kin in case of intestacy. SPES.

STAMPS.—LEASE FOR A YEAR. P. 176.

The question raised by J. A. M. is certainly novel. Even admitting that the covenant could be introduced, I think it would be a bad

plan, inasmuch as the lease for a year, being separate from the deed, is frequently lost, and a covenant of such importance as for the production of deeds, ought to be the subject of the greatest care. On reference to the Stamp Act, 55 G. 3, c. 184, titles, Bargain and Sale, and Conveyance, he will be convinced, I think, that in such a case a *distinct deed stamp* would be necessary. SPES.

### Law of Landlord and Tenant.

SELLING DISTRESS. P. 207.

A reasonable time, after the expiration of five days from the day of distress, is by law allowed to the landlord, for appraising and selling the goods distrained. *Pitt v. Shear*, 4 B. & Ald. 208. SPES.

## QUERIES.

### Common Law.

BILL OF EXCHANGE.—AGENT.

If an agent, in drawing, &c. a bill of exchange, indorse the bill, putting the words *sans recours*, can a holder of the bill charge the principal under such circumstances? And if an agent is compelled to pay his principal's bill, by indorsing, &c. in his (the agent's) own name, can he compel the principal to pay him the costs incurred in that action? And what remedy has an agent against his principal for the amount? A. P. B.

MARRIAGE.—MINORS.

If a marriage takes place between two persons, legally solemnized, either of which are under the age of 21 years, *without consent*, can the minor, on attaining 21, dissolve the marriage? and if so, to whom do the children belong? What amounts to a continuation of the marriage, when the minor attains the age of 21? Does not a continuing to live together, and for what space of time? B. S. M.

ILLEGITIMATE CHILD.

In the year 1819, A. had a bastard child sworn to him; and in 1820, an order was made on him to pay to the parish 3*s*. 6*d*. a week. The 3*s*. 6*d*. a week he has regularly paid to the mother, who resided out of the parish, and by whom the child was kept, by direction of the parish officers. The mother afterwards married, and the child, a boy, continued to live with his mother. The mother died lately, and the boy continued with his father-in-law until lately, when the father-in-law sent the boy, who is now fifteen years of age, to the parish where born; and the parish now again calls on A. to continue the 3*s*. 6*d*., agreeable to the order made upon him in 1820. Is A. liable?

A CONSTANT READER.

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FOR JANUARY, 1835.**

No. CCLI.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”  
HORAT.

## LECTURES AT THE INCORPORATED LAW SOCIETY.

### MR. DODD'S INTRODUCTORY LECTURE ON COMMON LAW.

In preparing the series of Lectures which I have the honor now to commence, I was naturally anxious to select a subject which possessed both utility and interest. Feeling my own inadequacy strongly to arrest your attention to my lucubrations, I was the more desirous to present to you a subject which, even under the most imperfect exposition, must still, from its utility, its importance, and its variety, possess very strong claims on your attention. The law respecting contracts is not only one which is every day repeatedly before the Courts, but, as every experienced solicitor well knows, is constantly the subject of inquiry and of practical proceedings in his office—one on which his clients perpetually ask advice, which he is often obliged to give *extempore*; one which presents points of perpetual novelty and nicety, on which he may frequently consult books and barristers without obtaining the precise information he wants; and on which, if he goes into Court with a cause, he may often find the oracles of the bench either hesitating or divided, and much more ready to admit the difficulty and doubt of the case, and to reserve it for future argument, than to decide it. Thus, while the difficulties and niceties of the subject naturally give it an interest to us all as practising lawyers, the very great and increasing frequency of the cases which it affects, render all information upon the law of contracts, even the most elementary, humble, and simple, of

service to the man of business. In the early periods of our law, when land was the principal subject of property and of transfer, when commerce was very limited, and personal property had hardly an existence, the law respecting real property almost monopolized the astuteness and subtlety of lawyers. Three-fourths of the cases in our early reports turn on questions respecting real estate. In the third volume of Croke's excellent and accurate Reports in the reign of Elizabeth, James, and Charles, the cases respecting contracts of any sort are extremely rare, and are almost entirely confined to actions of covenant on leases or deeds of conveyance, and to actions of debt on bonds or statutes. Very few cases of *assumpsit* occur, and scarcely one case of any contract of a commercial character. The perpetual actions for verbal slander, and for paltry assaults and false imprisonment, which occur at that period, form almost the only variety from the general tenor of cases respecting rights to the soil, devises and conveyances, rents, copyhold and manorial rights, tithes, heriots, commons, ways, and other real interests. The character of the cases in the truly valuable Reports of Saunders, in the time of Charles the Second, is for the most part (though with more exceptions) the same; and it is not till after the Revolution of 1688, that mercantile law and the subject of personal contracts begins to occupy that prominent place in our judicial proceedings which it has long held, and now holds. In the Reports of Lord Raymond, of Salkeld, Strange, Comberbach, and their cotemporaries, the cases upon personal contracts become very frequent. In short, the passing of the navigation laws in the reign of Charles the

Second, the establishment of the Bank of England, of the East India Company, of the South Sea Company, and of several insurance companies (the date of the Amicable Office is 1706, and of the Union Office 1714), the act putting promissory notes on the footing of bills, are all so many indications of that increasing activity in our national trade and commerce which at the same period begins conspicuously to appear in the character of the cases before the Courts. Sir John Holt, who presided in the Court of King's Bench from the Revolution to the year 1710, and whom Lord Stowell calls "that great master of English common law," was eminently calculated by his profound knowledge, his legal astuteness, and his strict impartiality and integrity, to deal with the novel descriptions of commercial contracts and dealings which then became the subject of litigation. If Lord Mansfield, Lord Kenyon, Lord Eldon, and above all Lord Ellenborough and Lord Tenterden, must be considered to have mainly reared the fabric of our commercial code—to have given to our law of contracts its consistency, good sense, and equity—Lord Holt undoubtedly laid its earliest foundations. His decisions, reported by Lord Raymond, are full of knowledge, strong sense, and acuteness; and they settled, for the first time, many of those cardinal and important points which have now become quite familiar to us all in our law of contracts. The decisions upon bills of exchange were then very numerous. The Court, in his time, first settled that the custom of merchants need not be stated at length in the declaration—that a protest was not necessary, in case of an inland bill, in order to sue the drawer—that a bill drawn payable only out of a specific fund was not a negotiable bill of exchange. They also then first decided that the consignee under a bill of lading acquires the property in the goods, so as to entitle him to sue the shipowner for their loss. The principles of the action of *assumpsit* also became then better understood and settled. The common money counts grew into every day use, though Lord Holt said he was a bold man, indeed who first ventured on them. His celebrated judgment in *Coggs v. Bernard*, 1 Lord Raymond, I should strongly recommend to your attention. It exhibits a simple and perspicuous summary of the law respecting the various contracts of bailment, deduced from our decided cases, and from the text of Bracton, who drew his doctrine on this subject from the source of

the civil law. Sir W. Jones's elegant Essay on Bailment is, in fact, an expansion and a commentary on this luminous judgment; and while Sir William, by a reference to the text of the civil law, and a close examination of our decided cases, exposes some manifest errors of Lord Coke in *Southcote's case* on this subject, Sir William in general confirms and fortifies the principles laid down by Lord Holt, which have formed the standard for all modern judgments on this important subject.

During the thirty-two years in which Lord Mansfield presided in the Court of King's Bench, commercial dealings of every sort sustained a great extension, and the amount of personal property in the kingdom was largely increased and widely disseminated. His decisions on questions of contract, reported in Barrows, Douglas, and Cowper's Reports, are of the highest authority and value. The law of bills of exchange became under his hands more definite and settled. The law respecting marine insurance almost started into life, and owes its systematic character, and its general consistency and equity, mainly to Lord Mansfield's acuteness and sound judgment, followed up by the vigour and sagacity of Lord Ellenborough, and the sound sense and industry of Lord Tenterden. Mr. Justice Park and Mr. Serjeant Marshall, in their useful works on the Law of Marine Insurance, have expressed their admiration of the enlightened equity and sound wisdom which mark the insurance cases decided by Lord Mansfield. Mr. Justice Buller, in the famous case of *Lickbarrow v. Mason*, 2 T. R. 63, says of him—"Within these thirty years the commercial law of this country has taken a very different turn from what it did before. We find in *Juce v. Prescott*, that Lord Hardwicke was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find that in courts of law all the evidence in mercantile cases was thrown together; they were generally left to a jury, and produced no general principle. From that time, we all know the great study has been to find some certain general principles, which shall be known to all mankind; not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained by Lord Mansfield, till we have been lost in admiration at the strength and stretch of understanding; and I should

be very sorry to find myself under a necessity of differing from any case upon this subject, which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country." Lord Kenyon, Lord Eldon, in the Common Pleas, and above all Lord Ellenborough, by a series of sound and consistent adjudications, in a great degree filled up the admirable outline of the law of personality and of contracts, which was left by Lord Mansfield: and it is fortunate for the profession, that the body of excellent and satisfactory decisions upon an almost infinite variety of commercial and other contracts, which Lord Ellenborough pronounced during the sixteen years in which he was on the Bench, have been accurately and carefully reported by Sir Edward East, and by Sir John Campbell. Any student who will diligently study and digest the cases on contracts and commercial law, in East's and Campbell's Reports, will find them full of interest, and will readily become familiar with the leading principles governing those contracts, which are in every day use. The Court of King's Bench was, during that time, filled by men of singularly vigorous understandings, and profound professional knowledge:—Lord Ellenborough; Justices Lawrence, Le Blanc, and Bayley; while the great variety and difficulty of the cases arising from extended trade, respecting questions of insurance; of charter-parties; of principal and agent; of factors and brokers; of del credere commissions; of insurers and under-writers; the rights of aliens, neutrals, and belligerents; questions of set-off; of stoppage *in transitu*; of bankruptcy; of compositions with creditors; of agreements within the 4th and 17th sections of the Statute of Frauds, called for all the learning and sagacity of those Judges, and enabled them to follow out the general principles of the law of contracts, which had been settled in Lord Mansfield and Lord Kenyon's time, and to apply them to the more complicated facts, and novel combinations of circumstances, which then arose. It would be difficult to name four volumes in all a common lawyer's library, more replete with useful practical knowledge, with every day information, coming home to the varied business of life, and especially to the trade and dealings of London, than Campbell's Reports. There is scarcely any species of contract, or practical dealing among tradesmen, which is not there. The subject of some of Lord Ellenborough's masterly decisions, which are not less re-

markable for their general soundness and authority, than for that peculiar Johnsonian vigour, that originality of thought and expression, which so strongly impresses them on the memory of the reader. Many of the most settled and important principles of the law of contracts, rest mainly or entirely on the high and unquestioned authority of these admirable adjudications, which were struck off at the sittings with a surprising readiness, not less in comprehending and analysing intricate facts, than in correctly applying to them the rules of law, or the principles of moral justice. The attempt to disturb these decisions, by motions before the Court *in banc*, was not very frequently successful; and it perpetually happened, that the judgment even on novel and uncommon cases, which Lord Ellenborough's sagacity and legal knowledge suggested with the rapidity of intuition, at Guildhall, was found on investigation to be supported by the highest written authorities in our law books,—so correct and extensive was his reading, and so deeply was his mind imbued with the principles and practice of English Law. Many who now hear me can from their own experience, I am sure, bear witness that this is no exaggerated eulogy; not the mere partial admiration of a *laudator temporis acti*. You who do not remember that great judge, whose fame is so peculiarly connected with the particular subject which we are now considering, will find his learning and sagacity, his extensive knowledge and sound judgment, and even much of his characteristic expression and style, faithfully and accurately recorded in the Reports of Campbell and of East.

The acute and accurate mind of Lord Tenterden, was in a peculiar manner occupied with our trading and commercial law. He commenced his professional life in the busy office of Messrs. Sandys and Horton, where he saw much agency and commercial common law business. He was the special friend and eleve of Judge Buller, who had so mainly contributed, together with Lord Mansfield, to the settlement of the law of marine insurance, and of the law of contracts generally. His long practice as a special pleader, made him familiar with every branch of pleading, and with none more so, than with the difficult and intricate pleadings in *assumpsit* and covenant on policies, charter-parties, bills of lading, guarantees, and special mercantile contracts. His familiarity with the technical bearing and effect of a long and intricate *non prius* record, was very conspicuous, and was eminently

useful to him as a judge at *nisi prius*. Soon after he was called to the bar, he published his excellent work on the Law of Shipping, a most useful study to all who are peculiarly engaged in mercantile law. Its accuracy and sound sense, its judicious union of a correct analysis of cases, with a connected dissertation on the subject, and its extensive researches into the works of foreign commercial jurists, render this work at once classical for its style and erudition, and eminently useful in business for its practical views and its luminous arrangement. These qualities have called forth the repeated encomiums of Lord Stowell, Lord Ellenborough, Lord Eldon, and other lawyers; and have rendered it a practical guide and vade mecum, on all questions of marine law. The cases on the subject of contracts, during the fifteen years in which Lord Tenterden sat on the Bench, gave ample scope by their variety and difficulty, for the application of that learning and knowledge of business, and the exercise of that sound practical sense, which peculiarly distinguished Lord Tenterden; assisted by the profound knowledge and intense labour of Judge Bayley, and the unerring sagacity and judgment of Mr. J. Holroyd. His judgments in *Barnewall & Ald. v. B. & Cr.*; and *Barn. & Adol.*, have settled many new and leading points in the law of contracts, in a most satisfactory manner. One of his very earliest judgments (*Baring v. Corrie*, 2 Barn. & Ald. 137) is a leading authority as to the duties and character of factors and brokers, and places on the clearest footing the distinction between the two characters, and the consequences as to set-off, and the rights of third parties, which flow from that distinction. Another of his very recent decisions, which I shall have occasion to notice more hereafter (*Street v. Blay*, 2 Barn. & Ald. 456) settles the principle of the law on a very nice point, viz. the right of a vendee of horses or other chattels to rescind the sale and return the goods, on the ground of their not corresponding with a warranty. In short, I cannot too strongly recommend the concise and accurate judgments of Lord Tenterden to your perusal, and more especially in the earlier and middle parts of his career, when the cases depend more on broad principles of law, and less on nice and minute diversities of *fact*, than in the latter part of his life. I may add, that you will find in a late entertaining publication (Sir Egerton Brydges' *Memoirs*) a few interesting particulars of his life, and some of his familiar letters, descriptive of his pursuits in the decline of life.

From this slight and imperfect sketch of the growth and progress of the law of Contracts, you will see that it possesses the commendation of having principally grown up within the last 100 years—since the scholastic pedantries of our old literature and philosophy, had given place to sound principles of reasoning and logic, and after the old school of buckram and black-letter lawyers had been replaced by judges of more enlarged understandings and more philosophic views, Springing from no feudal origin, and perplexed by none of the antiquated technicalities which disfigure some other portions of the law, the law of contracts generally rests on the basis of common sense, and the rules of plain and obvious justice. Very few of its canons are merely *positioni juris*. It will rarely disgust you with decisions outraging reason, but as to which you will be sorry to say, *ita lex est*. When borrowed from other laws, it has not been derived from the obscure folios of Norman, Gothic, or Scandinavian jurisprudence, but from the pure and bright fountains of Roman law in its best days;—as in the instance of the law of bailments, the law respecting appropriation of payments, where several debts are existing, and much of the law of partnership;—or from the enlightened modern jurists of France and Holland—from Huber, Emerigon, Roceus, Pothier, and Pardessus, from whom many of our rules respecting marine insurance, charter-parties, and seamen's wages, and also bills of exchange, have been adopted. Though occasionally modified by statutes, this branch of law in general depends on the principles of common law; or to speak more correctly, on the rules of justice and morality, practically applied by great and sagacious Judges, to the various transactions of trade and business which have required adjudication. It has therefore a less forbidding aspect, a less technical character, a more systematic and orderly coherence and connexion of parts, more good sense and simplicity, than those parts of our law which are of antique and feudal origin. The most determined and zealous of modern law reformers would probably not in many instances wish violently to innovate on our law of contracts. It is principally to this part of our law that Jeremy Bentham, a shrewd critic, and in general most hostile to our English law, has applied the following eulogy: "Traverse the whole continent of Europe,—ransack all the libraries belonging to the jurisprudential systems of the several political states;—add the con-

tents altogether, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement—in a word, all points taken together, in instructiveness—to that which may be seen to be afforded by the collection of English Reports of adjudged cases.”—On Codification, p. 37.

## LEGAL CHRONOLOGY, FOR THE YEAR, 1834.

*Jan.*—The Real Property Acts, which were passed in 1833, came into operation the first of this month.

Perpetual Commissioners under the Fines and Recoveries' Abolition Act, were appointed by the Lord Chief Justice of the Common Pleas.

*21st.*—Case decided as to the jurisdiction of the Inner Temple over Clifford's Inn. See 7 L. O. 340.

*23d.*—The Benchers of the Inner Temple decided against the application of Mr. D. W. Harvey, to be called to the Bar. See 7 L. O. 209, 285.

New Practice Rules of Hil. 4 W. 4, were made. See 7 L. O. 231.

Mr. Starkie and Mr. Austin were appointed to deliver law lectures at the Inner Temple.

*31st.*—Mr. Baron Bayley retired from the Bench. See 7 L. O. 305.

The Rules on Pleading to be laid before Parliament, previous to their coming into operation, were this day pronounced.

New Rules were made by the Judges of the Common Pleas, under the Fine and Recovery Abolition Act, relating to the acknowledgment of deeds by married women.

*Feb. 4th.*—The Parliament was opened by the King in person. See 7 L. O. 303.

Notices were given by the Solicitor General, (Sir J. Campbell,) of Bills to abolish Imprisonment for Debt, and alter the Law of Wills.

Notice was given of a Bill for the registration of Births, Marriages, and Deaths.

The Rules of Pleading were laid before Parliament.

Bills were introduced for continuing the Turnpike Acts; for facilitating the Recovery of Tenements, after the expiration of notice to quit; for County Registration of Deeds; for Dissenters' Marriages; allowing Prisoners' Counsel—also as to Justices of the Peace—Parish Apprentices—and County Coroners.

Lord Althorp stated the intention of the

Ministry to bring in the Local Courts' Bill in the House of Commons.

Mr. Lynch gave notice of a motion as to Chancery Reform.

*20th.*—The Poor Law Commissioners made their Report. See 7 L. O. 353.

*25th.*—Sir W. Horne having resigned the office of Attorney General, Sir John Campbell was appointed in his stead, and Mr. Pepys Solicitor General.

Notices of the following Bills were given:—Highways; Liberty of the Press; Law of Forfeiture; Illegal Transactions; General Registry.

Mr. Hume gave notice of a motion to reduce the Salaries of the Puisne Judges to 3500*l.*

The Bankruptcy Funds, and County Coroners' Bills, were brought in.

Chancery Returns were ordered by the House of Commons.

*28th.*—Mr. John Williams, of the Northern Bar, K. C., was sworn in as one of the Barons of the Exchequer.

*March.*—A new Scale of Costs was made by the Judges of the Common Law Courts, to take effect on the 15th instant. See 7 L. O. 376.

*11th.*—The motion of Mr. C. Ripon for removing the Bishops from the House of Lords, was negatived in the House of Commons by a majority of 125 to 58.

The English and Irish Judgments Bill was brought in by Lord Wynford.

Notices were given of the following Bills:—Government of Parishes; Game; Indemnity; Hanging in Chains; Sewers; and Observance of the Sabbath.

*13th.*—The Common Law Commissioners made their sixth Report on the Inns of Court. See 7 L. O. 500.

*22d.*—Sir Thomas Denman was elevated to the Peerage, by the title of Baron Denman of Dovedale.

Sir John Bayley, Bart. was appointed a Privy Councillor.

Mr. F. Pollock, K. C. was appointed Attorney General of Lancaster.

The Central Criminal Court Bill was introduced by Lord Chancellor Brougham.

*26th.*—The Indemnity Act passed.

The Turnpike Roads' Continuance Act passed.

*29th.*—A question was raised in the House of Lords, as to the precedence of the Attorney General of England and the Lord Advocate of Scotland. See 7 L. O. 466, 505.

*April 14th.*—The sum of 17,000*l.* was voted, for the repair and restoration of



Westminster Hall. See 7 L. O. 527.

15th.—The Chancellor of the Exchequer, (Lord Althorp,) moved resolutions for the Abolition of Tithes in England. The subject referred to a Special Committee.

The following Bills were introduced in Parliament;—Spring Assizes and Quarter Sessions; Exchange of Lands in Common Fields.

The Poor Law Amendment Bill was brought in.

The Chancellor of the Exchequer moved resolutions for abolishing Church Rates, and substituting a Grant out of the Land Tax, which were agreed to by a majority of 256 to 140; but the Bill was not persevered in.

Notices were given of Bills for the Domestic Registration of Deeds; the Administration of Justice in Boroughs; Benefit Societies; the Sale of Entailed Property, and altering the Law of Escheats.

25th.—The King's warrant was issued for opening the Common Pleas to all Barristers. See 8 L. O. 15.

29th.—Sir James Parke, and Sir E. H. Alderson, took their Seats on the Exchequer Bench; Sir John Vaughan in the Common Pleas, and Sir John Williams in the King's Bench.

May. 7th.—The Bill for establishing a General Registry of Deeds, was thrown out of the House of Commons by 161 to 45, and the County Register Bill by 125 to 68.

The Commutation of Tithes Bill brought in.

12th.—Lord Althorp stated his inability to proceed this session with the Local Courts, and Imprisonment for Debt Bills.

15th.—Mr. Tennyson's motion for shortening the Duration of Parliaments, was rejected by a majority of 225 to 185.

16th.—Lord Chancellor Brougham brought in Bills to prevent Non-residence, and Pluralities in the Church of England and Ireland.

18th.—Mr. Jeffery was created a Judge of Session.

Mr. D. W. Harvey's case referred to a select Committee.

Mr. Baron Alderson appointed to hear Causes on the Equity side of the Exchequer, in the absence of the L. C. Baron.

Notice was given by Mr. Pollock of a Bill to abolish Arrest, except on written instruments, and to improve the Practice of the Common Pleas at Lancaster.

The following Bills were brought in:—Punishment for Robbery; Apportionment of Rent; Religious Worship; and facilitat-

ing the Transfer of Property.

22d.—The Smuggling Amendment Act passed.

The Dissenters' Marriages Bill was withdrawn.

The Sabbath Observance Bill was negatived.

June.—The Inclosure of Common Field Lands Bill was brought in.

Notice of a Bill to enfranchise Copyholds was given by the Attorney General (Sir J. Campbell).

The Bill for allowing Costs in Quare Impedit was brought in.

New Rules (of Trinity Term) were made by the Common Pleas Judges under the Fine and Recovery Act.

Notices of the following Bills were given: Service of Process abroad; Leases by Tenants for Life; Law of Partnership.

10th.—A Report was made by a Select Committee of the House of Commons on the Court of Bankruptcy.

16th.—The Apportionment Act passed. An Act for repealing the House Duty passed.

27th.—The Escheat and Forfeiture Act was passed.

30th.—The Editor of the Morning Post was committed to custody by the House of Lords, for a libel on Chancellor Brougham, relating to the appeal cause of *Salarte v. Palmer*. See 8 L. O. 193, 210, 239.

The Game Laws Amendment and Jews' Civil Disabilities Bills were negatived.

The Report of the Commissioners on the Criminal Law was made on the 24th. See Appendix to 8 L. O.

July.—The following Bills were brought in: Carriers' Act Amendment; Capital Punishment; Irish Court of Chancery; Joint Stock Companies; Turnpike Acts Amendment; Church Rates; Stay of Tithe Suits; Repeal of Duties and Allowance of Spoiled Stamps.

A new regulation was made by the Accountant General of the Court of Chancery, at the instance of the Incorporated Law Society, for transferring Stock during the Holidays at the Bank.

Notice was given of a Bill to empower the Commissioners of Woods and Forests to erect a Record Office, and to empower the Society of Serjeants' Inn to build new Chambers for the Judges.

Mr. Hill, Mr. Thesiger, and Mr. Erie were appointed King's Counsel.

25th.—The following Acts passed: Abolishing Hanging in Chains; Administering Justice in Boroughs; Landed Securities in

Ireland; Exchange of Common Field Lands; Chimney Sweepers; Central Criminal Court.

30th.—The following Acts passed: Costs in Quare Impedit; Friendly Societies; Cornwall Stannary Courts.

August.—The following Bills were withdrawn: Pluralities Prevention and Non-residence of Clergy; Abolishing Imprisonment for Debt; Law of Wills; Illegal Securities; Prisoners' Counsel; Punishment of Death; Highways; Sewers; Domestic Registration of Deeds; Parish Apprentices; Tithes; Carriers; Church Rates; Leases by Tenants for Life; Entailed Property; Transfer of Property; English and Irish Judgments; Bankruptcy Funds; Lands and Tenements Recovery; Registration of Births, &c.

The following Bills were negatived: Common Fields Inclosure; Justices of the Peace; County Coroners; Parish Vestries.

9th.—The House of Lords decided that the Attorney General of England has Precedency of the Lord Advocate of Scotland as Counsel at the Bar of that House.

A Select Committee of the House of Commons reported in Mr. D. W. Harvey's favor.

Poor Law Commissioners and Secretary appointed.

13th.—The following Acts were passed: Justices of the Peace in Scilly and Cornwall; Spring Assizes; County Rates; Weights and Measures; Assessed Taxes; Irish Insolvents; Repeal of Stamp Duties, and Allowance of Spoiled Stamps; Boards of Stamps and Taxes; Lancaster Common Pleas; Capital Punishment.

14th.—The following Acts were passed: Officers of the House of Commons; Assessed Taxes; Poor Laws; Irish Court of Chancery; India Insolvents; Bank of England.

15th.—The following Acts were passed: Turnpike Roads; Service of Equity Process abroad; Tithe Suits; Irish Fines and Recoveries Act; Trading and other Companies.

The Parliament was prorogued. See 8 L. O. 348, for the King's Speech on Law Reform.

Mr. Cresswell, of the Northern Circuit, was appointed one of the King's Counsel.

Sept. 14th.—Sir John Leach, the late Master of the Rolls, died at Edinburgh.

Oct. 16th.—The Houses of Parliament were destroyed by fire.

Sir C. C. Pepys (late Solicitor General) was appointed Master of the Rolls.

Mr. Preston was appointed one of the King's Counsel.

Nov. 1st.—The Central Criminal Court was opened before the Lord Chancellor and several of the Common Law Judges.

Mr. Rolfe was appointed Solicitor General.

13th.—Change of Administration.

21st.—Lord Brougham retired from the office of Lord Chancellor.

22d.—Lord Lyndhurst was sworn in as Lord Chancellor.

Lord Brougham proposed to take the office of Lord Chief Baron, but afterwards withdrew the application.

25th.—A New Rule was made by the Court of Common Pleas as to entering Attorneys' Certificates and Payment of Term-age Fees.

Dec.—Sir James Scarlett was appointed Lord Chief Baron; Sir Edward Sugden Lord Chancellor of Ireland; Mr. F. Pollock Attorney General; and Mr. Follett Solicitor General.

30th.—Dissolution of Parliament.

## LAW OF ATTORNEYS.

No. XXVII.

### CERTIFICATED CONVEYANCERS.

An important question is now mooted in the profession, whether certificated conveyancers, besides being entitled to fees for drawing deeds and instruments, and advising on the law and practice of conveyancing,—in a similar way to special pleaders,—can also charge for attendances and correspondence, and for ingrossing and attesting deeds, like solicitors? We understand that there is a case now pending on the Equity side of the Exchequer, in which this point will come before the Court. We think it desirable to direct the attention of our readers to such of the statutes and decisions as appear to us to be material, and we invite our intelligent correspondents to the fair discussion of the subject.

The 22 G. 2, c. 46, s. 11, recites that persons not admitted as attorneys or solicitors in any court of law or equity, had acted and practised in the office and business of attorneys and solicitors, and it enacts that if any attorney or solicitor should act as agent for such person, or permit him to use his (the attorney's) name, or enable him to appear, act, or practise in any respect as an attorney or solicitor, the attorney or solicitor shall be struck off the roll, and the unqualified person so acting or practising be

committed to prison, not exceeding one year.

The first point, therefore, seems to be, to determine what is the proper "office and business" of an attorney or solicitor? That it is within the scope of his office and business to prepare securities for the investment of money, appears by several authorities. Amongst the rest, the following:

In *Adams v. Malkin*, 3 Camp. 534, which was a case as to a solicitor acting as a money scrivener and therefore liable to the bankrupt laws, Chief Justice Gibbs said, "at the present day the banker occupies one department of the business of the scrivener, by being the depository of the money, and the attorney the other, by drawing the securities. And Lord Eldon, in *Ex parte Malkin* (2 Ves. & B. 31), said, "The notion amongst old conveyancers was, that a scrivener who drew the deeds could make no charge for that; that his procuration included all." "The practice of a scrivener charging procuring money arose upon this, that his charge as an attorney was illegal, unless he was an attorney."

From the last authority it appears, not only that the attorney is the proper person to prepare the securities for money invested, but it is illegal for any other person to do so. Under the Stamp Act, however, certificated conveyancers are allowed to *draw or prepare*, but not, it appears, to *ingross or copy* deeds or instruments.

The 55 G. 3, c. 184, Sched. Part 1, directs as follows:

"Certificate to be taken out yearly by every person being a member of one of the four Inns of Court in England, who in the character of conveyancer, special pleader, draftsman in equity, or otherwise, shall for or in expectation of any fee, gain, or reward, *draw or prepare* any conveyance of, or deed or instrument relating to any estate or property, real or personal, or any other deed or contract whatever, or any pleadings or proceedings in any court of law or equity."

The following are the *exemptions*:

"Serjeants at law and barristers."

"Attorneys, solicitors, proctors and notaries public, and other persons acting as such by virtue of any office or appointment, who shall respectively take out certificates in those characters."

"Public officers drawing or preparing deeds or other instruments by virtue of their offices and in the course of their official duty only, and not otherwise."

The 44 G. 3, c. 98, Schedule A, contains the following special exemptions:

"Persons *preparing or drawing* agreements under hand only, or wills, or letters of attorney."

"Persons solely employed to *ingross or copy* any deed, instrument, or other proceedings *not drawn or prepared by themselves*, and for their own account respectively."

But these exemptions are not made in the 55 G. 3, c. 184.

From the statement of these exemptions in the Schedule to the 44 G. 3, c. 98, it would seem that the person who prepares or draws must not ingross or copy, unless he be an attorney; that is to say, if entitled in the character of a certificated conveyancer to charge for preparing or drawing, he cannot also recover for ingrossing at the rate allowed to a solicitor, whose fees are settled in the courts of equity at 8d. per folio for ingrossing.

It will also be observed, that although "*preparing* conveyances" might at first sight be supposed to include ingrossing, so as to render the deed ready for execution, yet here the words preparing or drawing are used synonymously, and put in opposition to ingrossing or copying. It would therefore appear that the certificated conveyancer, like the special pleader, can only draw the conveyance; and if no solicitor be employed, the law stationer, or some person who does not draw the instrument, is the person to ingross it.

Among the cases which have been decided relating to the fees of conveyancers, are the following:

In *Edgar v. Hunter*, (E. 1817) 1 Holt, 528, it was decided that persons required to take out certificates under the 55 G. 3, c. 184, sched. A., part 1, title Certificate, are only persons being members of the four Inns of Court, &c.

It was an action for work and labour. The plaintiff was a medical agent, and had been employed by the defendant in a negotiation for the purchase of a medical business. A gentleman was found desirous to dispose of his practice; and the plaintiff drew up an agreement between the defendant and this person. The contract was not executed, and the plaintiff now sued the defendant for a compensation: first, for preparing and drawing the agreement: Secondly, for work and labour generally. The plaintiff had no license under any act of parliament. *Gibbs, C. J.*, said, this cannot with any reason be called a proceeding in law or equity. The act relied on is the 55 G. 3, c. 184. The certificate, under that act, is only required to be taken out by persons being "members of Inns of Court," who shall transact certain business. This is the plain and obvious construction. It does not apply to persons not being members of Inns of Court. There is no previous clause in the statute, enacting that none but members of court shall draw such agreements; and this clause

only applies to members of Inns of Court who shall prepare such contracts. Verdict for 20*l*.

In *Jenkins v. Slade* (E. 1824), 1 Car. & P. 270, it was held, that a certificated conveyancer can maintain no action for his fees.

This was an action of assumpsit for work and labour, as a certificated conveyancer, with the common counts.

The plaintiff's clerk proved that the conveyancing was done by the plaintiff, who was a certificated conveyancer, to the amount of 18*l*., and that 2*l*. 4*s*. 6*d*. had been paid by the plaintiff to a barrister, for settling one of the drafts, and 4*l*. 16*s*. 6*d*. to a law stationer, for engrossing them.<sup>a</sup> There was no defence.

*Best, C. J*—I am of opinion that a certificated conveyancer can maintain no action for his fees. How can any jury say what his labour is worth? What the plaintiff has paid out of pocket he may recover, but not his own fees. Verdict for the plaintiff, damages 7*l*.

This case, however, was over-ruled by the following; but it will be observed, that no charges appeared to have been made for ingrossing deeds, attendances, correspondence, &c. or other business usually transacted by solicitors. It determines nothing more than that the plaintiff was entitled to recover for *business done "as a conveyancer."* The case referred to is that of *Poucher v. Norman* (H. 1825), 1 B. & Cr. 270; 5 D. & R. 648, in which it was decided that a certificated conveyancer may maintain an action for his fees.

The declaration was in assumpsit upon a promissory note, and for work and labour.—Plea, non-assumpsit, with notice of set-off. At the trial, before *Alexander, C. B.*, at the Cambridge Summer Assizes in 1824, the plaintiff proved the defendant's execution of the promissory note, and also *business done by him for the defendant as a conveyancer*. And the defendant proved a set-off. It also appeared that the plaintiff was neither a barrister nor an attorney, but that he had taken out his certificate, pursuant to the statute 44 G. 3, c. 98, s. 14. It was nevertheless objected that the plaintiff could not recover upon the count for work and labour for the *business done as a conveyancer*. And the Lord Chief Baron, being of that opinion, told the Jury that the plaintiff was not by law entitled to recover any thing in respect of his claim for business done as a conveyancer, directing them to find a verdict for either the plaintiff or the defendant, according as they should think upon the evidence, that the amount of the promissory note was greater or smaller than that of the set-off. The Jury found for the defendant. In *Michaelmas* term following a rule *nisi* for a new trial was obtained upon two grounds: first, that the learned Judge, in telling the Jury that

the plaintiff could not recover for business done as a conveyancer, had misdirected them in point of law; and, second, that the verdict was against evidence. The learned Judge reported to the Court that, in his opinion, the verdict was against the evidence.

*Bayley, J.*, said, the rule for a new trial in this case must be made absolute. One portion of the plaintiff's claim was entirely withheld from the view of the Jury, for the Lord Chief Baron told them that the plaintiff could not maintain an action in respect of the business done by him as a conveyancer. In that direction the learned Judge was clearly mistaken. There is no reason that I can suggest to my mind why a conveyancer should labour under such a disability. The general rule of law is, that every man who devotes his labour, his talents, or his time to the service of another, shall be entitled to a recompense.<sup>b</sup> To that rule there are two exceptions, namely, barristers and physicians. The principle upon which they are excepted is, that their professional occupation is *quiddam honorarium*,—that they act not upon any mercenary feeling, but with a view to an honorary reward. A conveyancer does not come within that principle: he stands in the same situation as a surgeon or an attorney. If a conveyancer could not recover for work and labour done, he would be in a condition of great hardship; for, from the very nature of his business, he cannot anticipate the amount of his fees, and stipulate for their payment accordingly; and therefore the consequence would be that, in many instances, he would receive no remuneration at all.

*Holroyd, J.*—It is quite clear that a conveyancer who is not at the bar, may maintain an action to recover a compensation for business done. He has the same ground of action which the law gives to every man, with the exception already pointed out, who performs a service for another. Persons practising in the subordinate degrees, even of the excepted professions, may recover for their services: surgeons may recover for skill and attendance, and attorneys for conveyancing. There is therefore nothing to place a certificated conveyancer, not at the Bar, in a different situation from an attorney practising as a conveyancer, or to take him out of the general rule both of law and justice, that every man should be entitled to recover a recompense for the devotion of his labour for the benefit of another.

*Littledale, J.*, concurred. Rule absolute.

The following case somewhat defines the proper vocation of a certificated conveyancer,—so far at least that he shall not act in the investigation of a bankrupt's affairs, nor be entitled, like an attorney, to charge for attendances.

In *Crammond v. Crouch* (Jan. 1828), 3 Car. & P. 77, it was held, that if a certi-

<sup>a</sup> It appears the conveyancer charged only for the money paid to the stationer for engrossing.

<sup>b</sup> This supposes no restraint by statute; but unqualified persons are prohibited from acting as attorneys.

feated conveyancer induce a creditor of a bankrupt to employ him in investigating a bankrupt's affairs, by representing himself to be an attorney and solicitor, he is not entitled to recover anything for his trouble: and even, if he paid fees to counsel in the course of the investigation, he cannot recover them of his employer as money paid, laid out, and expended.

The action was in Assumpsit. The first count of the declaration was on a special agreement, that in consideration that the plaintiff would investigate the affairs of one Parsons, a bankrupt, the defendant, and certain other persons who signed the agreement, would each of them pay an equal share of the reasonable charges to be made by the plaintiff for so doing. There was also a count for work and labour, as a certificated conveyancer. Plea, General Issue.

The plaintiff was a certificated conveyancer; and it appeared that the defendant and others, being creditors of Parsons, a bankrupt, signed a resolution, by which they agreed that an investigation should be made of the plaintiff's affairs; and they thereby employed the plaintiff to take such steps as he should think necessary; and each of them agreed to pay him an equal proportion of the reasonable charges to be made by him. It was proved that the plaintiff waited on various persons to acquire information respecting the state of the bankrupt's property, and also attended Mr. Rose, the barrister, to consult him on the propriety of presenting a petition to the Lord Chancellor, to stay the allowance of the bankrupt's certificate. However, it appeared from the cross examination of one of the plaintiff's own witnesses, that the plaintiff represented himself in the business as an attorney and solicitor.

Lord *Tenterden*, C. J.—I am quite clear that the plaintiff cannot recover. His own witness proves that the plaintiff held himself out as an attorney and solicitor; and besides that, *I see his bill is drawn out exactly like an attorney's bill: Attendances, 3s. 4d. and 6s. 8d., and so forth.*

Denman, C. S.—We have proof of the plaintiff's having paid Mr. Rose his fee; and I submit that at least we may recover that.

Lord *Tenterden*, C. J.—I think not. The plaintiff held himself out to be an attorney, and induced the defendant and the other creditors to employ him by means of a misrepresentation of his own situation. The plaintiff must be called.—*Nonsuit.*

It appears therefore from these cases, that at first a Certificated Conveyancer, as a member of an Inn of Court, was considered, with regard to his fees, in the same situation as Barristers. On further consideration, however, as he stood differently from Counsel in preparing drafts (the proper fees for which could not previously be ascertained) it was held that he might recover his fees;—but still the fees, so to be

recovered, must be limited to the proper business of a conveyancer as a member of one of the Inns of Court. And that business appears to be defined by the Stamp Act Certificate as "drawing or preparing any conveyance of, or deed or instrument relating to any estate or property, real or personal, or any other deed or contract"—and by adding the words "or any pleading or pleadings in any Court of Law or Equity"—the conveyancer is evidently placed on the same footing as the special pleader or equity draftsman; and it may be inferred that he can no more act as a solicitor in making attendances for the usual fees of 6s. 8d., or ingrossing deeds at 8d. per folio, than the special pleader or equity draftsman can ingross pleadings or proceedings in the superior Courts, or make attendances to collect evidence, or for other purposes connected with the conduct of an action or suit. Lord *Tenterden* clearly decides against a conveyancer charging in his bill like an attorney, for attendances, and so forth.

## GENERAL RULES OF THE COMMISSIONERS UNDER THE ABOLITION OF SLAVERY ACT.

### CLAIMS TO COMPENSATION FOR SLAVE PROPERTY.

[The six months limited by the following Rules, for appeal to his Majesty in Council, having expired, it may be useful to bring them to the notice of the profession, as arising out of the 3 and 4 W. 4, c. 73, forming indeed a part of the act, and (as a correspondent observes) of great importance to all persons interested in colonial property, as the time is now approaching for the preparation of claims and counter-claims regarding compensation.]

*At the Council Chamber, Whitehall, by a Committee of the Lords of his Majesty's Most Honorable Privy Council.*

Whereas the Commissioners appointed by his Majesty, under the authority of an act passed in the third and fourth year of his present majesty's reign, intituled, "An Act for the Abolition of Slavery throughout the British Colonies; for promoting the industry of manumitted slaves; and for compensating the persons hitherto entitled to the services of such slaves," have transmitted to the Lord President of the Council certain General Rules, framed by the said Commissioners under the 47th and 55th clauses of the said act: And whereas the said

Rules have been laid by the Lord President of the Council before his Majesty in Council, who has been pleased to refer the same to this Committee:

It is thereupon ordered by their Lordships, in pursuance of the provisions of the said act, that the said Rules, (which are hereunto annexed) be published three times in the London Gazette:

And their Lordships are pleased to order and declare, and it is hereby ordered and declared, that all persons interested in or affected by such General Rules may, within six months from this date, appeal against any such Rules to his Majesty in Council.

WM. L. BATHURST.

17th April, 1834.

Office of Commissioners of Compensation,  
March 31st, 1834.

GENERAL RULES UNDER THE 47TH AND 55TH  
CLAUSES OF THE ACT 3 & 4 W. 4, C. 73.

Whereas by an act of the 3d & 4th W. 4, c. 73, intituled "An act for the abolition of Slavery throughout the British Colonies; for promoting the industry of manumitted slaves; and for compensating the persons hitherto entitled to the services of such slaves," the Commissioners to be appointed thereby for apportioning and distributing the compensation provided by the said act are authorized and required, by the 47th clause, to institute certain enquiries for the purpose of regulating the apportionment within the several colonies of that part of the general compensation fund which shall be assigned to each of the said colonies; and the said commissioners are especially directed to have regard to the relative value of prædial slaves and of unattached slaves in every such colony, and to distinguish such slaves, whether prædial or unattached, into distinct classes; and with all practical precision to ascertain and fix the average value of a slave in each of the said classes:

And whereas we the undersigned, commissioners appointed by his Majesty, under the authority of the said act, for enquiring into and deciding upon the claims to compensation which may be preferred under the said act, after making the enquiries thereby directed, have ordered a return of the number of slaves and estimated value thereof in each of the said colonies to be made, according to the classes and in the form hereunto annexed, marked (A.)

And whereas the said commissioners are further required by the said 47th clause, to draw up and frame all such general rules, regard being had to the laws and usages in force in each colony respectively, as to them may seem best adapted for securing the just and equitable distribution of the said funds amongst or for the benefit of the several persons entitled thereto, and for the protection of such funds, and for the appointment and indemnification of trustees; now, therefore, we, the undersigned commissioners, have, in obedience to

such directions, drawn up and framed the following

RULES.

1. That the party or parties who shall be in possession as owner or owners of any slave or slaves, and shall appear as such by the latest returns made in the office of the Registrar of Slaves under the Registry Acts in the respective colonies, shall be deemed *primâ facie* the rightful owner or owners thereof respectively, and *primâ facie* entitled to the compensation monies to be awarded in respect thereof.

2. That in respect to all persons who, as owners or creditors, legatees or annuitants, may have any joint or common interest in any slave or slaves, or may be entitled to or interested in any slave or slaves, either in possession, remainder, reversion or expectancy, the compensation monies to be awarded in respect of such slave or slaves shall be deemed to be of the same nature, and impressed with the same character for all purposes whatsoever, so far as the same can be so taken and applied, as the slave or slaves in respect of whom such monies shall be allotted, and shall be subject to the same rules of distribution, and to the same charges and liabilities, as the same slave or slaves respectively would have been subject to, according to the several estates and interests of the parties entitled thereto, and agreeably to the law and usages of the particular colony in which such slave or slaves may be registered or settled.

3. That the compensation monies to be awarded in respect of any slave or slaves, subject to any trusts or powers whatsoever, shall be subject to the same trusts or powers in all respects as the same slave or slaves were subject to.

4. That in cases in which any such compensation monies, or any interest therein, shall belong to or be vested in any married woman, infant, lunatic, or person of insane or unsound mind, or person beyond the seas, or labouring under any other legal or natural disability or incapacity, for the protection of whose rights and interests it may be necessary to make provision, and in all other cases in which it may appear to be necessary for protecting any estates or interests, and securing the due application of compensation monies to be awarded in respect thereof; the Commissioners shall direct the appointment of trustees to be nominated on behalf of the parties interested, and to be approved by the Commissioners, and shall cause the necessary deeds to be prepared for declaring the rights and interests of the parties and the trusts and limitations in pursuance thereof, together with all necessary provisions for the indemnity of the trustees; and shall direct the compensation monies to be invested in the public funds in the names of such trustees, for the benefit of the parties entitled thereto, in pursuance of such trusts and according to such respective rights and interests.

5. That in case of the death of any person entitled to such compensation monies, who may die intestate before the award of such compensation, the succession to such monies shall be the same as the succession to the slave or slaves in respect of whom the compensation

shall be allotted, according to the law of the particular colony in which such slave or slaves were registered or settled.

6. That the appointment of the compensation monies amongst the persons seised of or entitled to, or having any mortgage, charge, incumbrance, judgment, or lien upon, or any claim to, or right or interest in, any slave or slaves to be manumitted by the said act, at the time of such their manumission, shall be made according to the priority which such mortgage, charge, incumbrance, judgment, or lien, claim, right, or interest, may respectively have in or upon such slave or slaves according to the laws and usages in force in the particular colony in which such slave or slaves may be registered or settled.

7. That in all cases in which the slave or slaves in respect of whom compensation is claimed shall be the subject of any suit in any court of law or equity in the united kingdom, and to the commissioners it shall seem meet, the compensation awarded to be paid in respect of such slave or slaves, shall, under the direction of the said court, be paid into the said court, to be subject to the orders, directions, and decrees of the court in which such suit may be depending; and in cases in which such slave or slaves shall be the subject of any suit in any court of law or equity in the colony of Jamaica, and to the commissioners it shall seem meet, the compensation in respect of such slave or slaves shall be paid, under the direction of the said court, to the Receiver-General of the said island, to be subject to the decrees, orders, and directions of the said court in which the suit may be depending.

And in all cases in which such slave or slaves shall be the subject of any suit in any court of law or equity in any other colony than Jamaica, and to the said commissioners it shall seem meet, the compensation monies awarded in respect of such slave or slaves shall be paid into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Exchequer, to be placed to his account there, *ex parte* "the persons named in the award, and therein specified as the plaintiffs and defendants in the said suit," pursuant to the method prescribed by an act made in the first year of the reign of King George the Fourth, intituled, "An act for the better securing the monies and effects paid into the Court of Exchequer, at Westminster, on account of the suitors of the said Court, and for other purposes;" and the general orders of the said Court, and without fee or reward; and the said monies, when so paid in shall, by petition in a summary way, be invested by the said Accountant-General in his name, *ex parte* the said account, in the purchase of 3*l.* per centum consolidated bank annuities, and the dividends thereon, and also the dividends on all future investments, as they arise and become due, shall be invested by the said Accountant-General in his name, in like manner, so that the same may accumulate for the benefit of the parties entitled thereto; and the said compensation monies so invested as aforesaid, and the said accumulations, shall be

paid and transferred under the direction of the said Court of Exchequer, to be signified by an order made upon a petition to be preferred in a summary way to the person or persons to whom the same shall be directed to be paid or transferred by the decree, order, or judgment of the court in the colony made in the said suit there depending or any court of appeal; and a copy of such decree, order, or judgment of the court in the colony, or court of appeal, signed by the proper officer of such court, shall be sufficient evidence of such decree, order, or judgment to the said Court of Exchequer.

And whereas by the 55th clause of the said Act, the said commissioners are required to frame and publish general rules, to be confirmed, allowed, and enrolled, as thereby directed, prescribing the form and manner of proceeding to be observed by any claimant or claimants preferring their claims under the said act, upon the prosecution of such claims, and in making any opposition to the same, and for the conduct of the proceedings under the said commission. We, therefore, the undersigned commissioners, in obedience to the directions of the said 55th clause, have drawn up and framed, in so far as relates to all the colonies or possessions mentioned and enumerated in the said act, except the Cape of Good Hope and Mauritius, the following

#### RULES.

1. That all persons in possession of and claiming compensation for any slave or slaves to be manumitted under the same act, shall prefer their claims before the assistant commissioners in the respective colonies in which the said slave or slaves may be registered or settled, within three months after the first day of August, one thousand eight hundred and thirty-four, in the form hereunto annexed, marked (B).

2. That every such claim shall be accompanied by a certificate, signed by the Registrar of Slaves of the colony in which such claim shall be made, that the number of such slaves mentioned in such claim (except any increase by birth since the last registry, as mentioned at the foot of such claim), are duly registered, together with the name or names of the person or persons by whom such slave or slaves have been registered.

And in case the property in any slave or slaves shall have been changed, between the last registration and the first day of August, one thousand eight hundred and thirty-four, the claimant must briefly state his title from the person in whose name the slaves were last registered.

3. That the said assistant commissioners shall from time to time, with all convenient speed, after receipt thereof, make out complete lists of all such claims according to the form following, that is to say:

- I. Name and description of claimant, or person in possession of the slaves.
- II. Plantation or other domicile of slaves.
- III. Number of slaves.

And shall cause the same to be published in the different newspapers of the said colony, or shall make the same known in such manner as to them shall seem most effectual for giving notice of the subject of such claim to all parties interested therein, in all parts of the said colony.

4. That such claims for compensation be made to the assistant commissioners, in the respective colonies, in duplicate, and that one part be transmitted by them to the commissioners in London, and filed in their office, and the other kept and filed in the office of the assistant commissioners.

5. That any person having, or claiming to have, any right, title, or interest in or to, or any mortgage, judgment, charge, incumbrance, or lien upon any slave or slaves included in such claims, or any right, title, or interest thereto, under or by virtue of any deed, will, testamentary instrument, or conveyance whatsoever, or in any other manner whatsoever, and claiming to receive the compensation for such slave or slaves, or any of them, in opposition to the original claimant, shall prefer a counter claim before the assistant commissioners in the respective colonies on or before the first day of February one thousand eight hundred and thirty-five, or in London, before the commissioners, on or before the first day of April, one thousand eight hundred and thirty-five: provided always, that in case no original claim shall have been filed within the time limited by the first rule for that purpose, any person claiming a right to receive the compensation as above-mentioned or any part thereof, may prefer his claim thereto, instead of a counter claim, and such claim shall be deemed and taken and be made in the same form, and subject to the same rules of proceeding in all respects as a counter claim, and with the same liberty of replying thereto as hereinafter directed, as if an original claim had been preferred.

6. That in cases in which no counter claim shall have been preferred in the colonies on or before the first day of February, one thousand eight hundred and thirty-five, the assistant commissioners within their respective colonies shall report the amount of compensation which may appear to them to be due upon each of the several claims, on application of the parties, or their agents, and transmit forthwith copies or lists of such several reports to the commissioners in London; and in cases in which no counter claim shall have been preferred before the commissioners in London, on or before the first day of April, one thousand eight hundred and thirty-five, the commissioners may proceed to award the compensation, according to the several claims, upon the application of the parties or their agents.

7. That in all cases in which a counter claim for the whole or any part of the compensation shall be preferred, such counter claim shall set forth the estate or interest, right or title, intended to be insisted on, and the dates, parties, and legal effect of the deeds or other instruments under which the counter claim is made, with the date of registration in the pro-

per office in the colony; and in all cases of mortgage, judgment, charge, incumbrance, or lien, such counter claim shall also set forth for what sum the same was granted or recovered, what payments (if any) have been made thereon, and the dates of such payments, and what remains due thereon, whether the same is the prior lien or otherwise, on the property included therein, and also the legal effect of such securities upon slaves, according to the law and usage of the particular colony in which such slaves have been registered or settled; and that in addition thereto, the substance of such counter claim be embodied and arranged in the tabular form hereunto annexed, marked (C).

8. That upon such counter claim being filed within the limited periods aforesaid, notice thereof be forthwith given by the party making the same to the party against whom it is made, or his agent, and a copy thereof be furnished to such party or his agent on application at the office of the commissioners, or of the assistant-commissioners, in the colony.

9. That within three months after such counter claim has been filed, and such notice given, the original claimant may file a replication to the said counter claim before the assistant commissioners, or the commissioners in London, and give notice forthwith of such replication to the counter claimant, or his agent, and a copy thereof be furnished to such counter claimant, or his agent, on application at the office of the commissioners in London, or of the assistant commissioners in the colony.

10. That in case no replication be filed within the time aforesaid, the commissioners may, on proof of notice of the counter claim having been served on the original claimant or his agent, proceed to consider the claim, and counter claim, and give such further directions and make such award as to them shall seem fit in respect to the compensation to be paid thereon.

11. That in case a replication shall be filed within the time aforesaid, the commissioners may, either upon application of the parties interested, or their agent for such purpose, or if to the commissioners it shall seem fit, direct proof to be adduced in support of such claim, counter claim, or replication, by the production of deeds or other documents, or by interrogatories on oath or affirmation, to be drawn and exhibited to the parties or witnesses, or by affidavits, or by *viva voce* examination of witnesses, as the case may require.

12. That on such proof as aforesaid being made, the commissioners shall, on the application of any of the parties interested, or their agents, cause a notice to issue to all the claimants and counter claimants in such proceedings named, that the said commissioners will on a day in such notice to be named, proceed to make their adjudication and award; copies of such notice to be served by the party applying for the same on all such claimants and counter claimants, or their agents.

13. That with the consent of the several parties, the assistant-commissioners in their re-



spective colonies be authorized to consider and proceed according to the several rules hereinbefore stated, to ascertain and report the amount of compensation appearing to be due to any of the litigant parties, in cases of contested claims, and transmit forthwith lists or copies of their proceedings and reports to the commissioners.

14. That the commissioners shall, upon such proceedings and reports being received from the assistant commissioners, proceed to the adjudication and award of the compensation which shall appear to be due, according to such lists, reports, and proceedings.

15. That all persons claiming to act on behalf of any party interested in the said compensation monies shall lodge with the commissioners or assistant commissioners, as the case may be, a power of attorney, or other authority under the hand of the party or parties so interested, to be registered in the proceedings of the said commissioners, or assistant commissioners, and no other than the person or persons named in such power of attorney or authority shall be entitled to act in that behalf so long as such power shall continue in force.

(Signed)

(L. S.) JAMES LEWIS.  
(L. S.) JOHN GEORGE SHAW LEFEVRE.  
(L. S.) SAMUEL DUCKWORTH.  
(L. S.) THOMAS AMYOT.  
(L. S.) HENRY FREDERICK STEPHENSON.  
(L. S.) HASTINGS ELWIN.

## INCORPORATED LAW SOCIETY.

Some change having taken place since the publication of the *Legal Almanack*, we have procured the following Lists.

### COMMITTEE OF MANAGEMENT.

*Chairman.*—Mr. Freshfield, M. P.

*Deputy Chairman.*—Mr. Frere.

Mr. Adlington.	Mr. Martineau.
Mr. Amory.	Mr. Metcalfe.
Mr. Austen.	Mr. Iltid Nicholl.
Mr. R. R. Bayley.	Mr. Ranken.
Mr. Brumdrett.	Mr. Shadwell.
Mr. M. Clayton.	Mr. Sweet.
Mr. Foss.	Mr. Teesdale.
Mr. James Hall.	Mr. Tooke, M. P.
Mr. R. Harrison.	Mr. R. White.
Mr. Holme.	Mr. Wilde.
Mr. W. Lowe.	

*Members admitted since the publication of the List in the Legal Almanack.*

Bircham, F. T., Lincoln's Inn Fields.  
Bowden, J. S., Aldermanbury.  
Brown, H. R., Great St. Helens.  
Collins, F., Spital Square.  
Crewe, T. F., Child's Place.  
Cooper, J. E., Barnard's Inn.  
Goodeve, J., New Millman Street.

Gwatkin, F., Lincoln's Inn New Square.  
Hunter, R., Lincoln's Inn New Square.  
Isaacson, J. F., Norfolk Street.  
Lewis, B., Warwick Court.  
Newman, R. F., Guildhall.  
Plucknett, J., Raymond Buildings.  
Pocock, Thomas, Bartholomew Close.  
Reeve, W. N., Aldermanbury.  
Richardson, B., Raymond Buildings.  
Taylor, John, Gray's Inn Square.  
Twynam, George, Winchester.  
Upton, R. B., Apothecaries' Hall.  
White, Edward, Great Marlboro' Street.  
Wright, J. B., Old Broad Street.

Number of Town Members . . .	848
Country Members . . .	145
	993

## FURTHER LIST OF PERPETUAL COMMISSIONERS.

Green, Henry, of Higham Ferrers,  
For the counties of Northampton, Bedford and Huntingdon.  
Lodge, John, of Lancaster,  
Worth, William, of Bourn,  
For the parts of Kesteven and Holland, in the county of Lincoln.

## LEGAL ANTIQUITIES.

### ATTORNEYS IN THE REIGN OF HENRY 6.

The conduct of attorneys under the Local Courts, which have been so often proposed in Parliament, may be somewhat estimated by what occurred in the reign of Henry the 6th. By the preamble of an act of the 33d of that reign, it appears, that not long previously, in the counties of Norfolk and Suffolk, there were only six or eight attorneys at most, coming to the King's Courts, in which time, it is said, great tranquillity reigned in those places, and little vexation was occasioned by untrue or foreign suits; but at the passing of the act, it is recited that there were in these places, four-score attorneys or more, the generality of whom had nothing to live upon but their practice, and besides were *very ignorant*. The statute also sets forth, that those attorneys came to *fairs and markets*, and other places where there were assemblies of the people, exhorting, procuring, and *moving persons to attempt untrue and foreign suits, for small trespasses, little offences, and small sums of money*, so that more suits were raised for malice, than for the ends of justice. To remedy these evils, it was enacted, that in future there should be but six common attorneys in the county of Norfolk, the same number in Suffolk, and in the city of Norwich only two, to be appointed by the two chief justices, of the most sufficient and best instructed, and any other persons acting as attorneys, were subjected to severe penalties.

## LIST OF NEW PUBLICATIONS.

Reports of Cases in the Court of King's Bench, Easter and Trinity Terms, 4 W. 4, by J. L. Adolphus and T. F. Ellis, Esqrs., Vol. 1, pt. 2. Price 7s. 6d.

Reports of Cases in Bankruptcy in the Court of Review, by E. E. Deacon & E. Chitty, Esqrs. Price 11s.

New Cases in the Court of Common Pleas and other Courts, Michaelmas Term, 4 W. 4. By P. Bingham, Esq. Vol. 1, pt. 2. Price 5s.

Reports of Cases in the Vice Chancellor's Court, by N. Simons, Esq. Vol. 5, pt. 3. Price 5s.

A Supplement to the first, second, and third Parts of Mr. Chitty's Treatise on the General Practice of the Law, stating the recent Statutes and Decisions since the first publication of that work, to January 1, 1835, with New Forms, &c. By J. Chitty, Esq. price 7s. 6d.

An Alphabetical Summary of the Practice of the Courts of K. B., C. P., and Exchequer, as assimilated and established by the recent Rules and Statutes, with Practical Forms and new Table of Costs. Second edition. By C. Petersdoff, Esq. Price 10s. 6d.

New Rules of Pleading, with Notes and Observations, and Decided Cases, to the end of Michaelmas Term, 1834. By S. R. Bosanquet, Esq. Price 4s. 6d.

## BANKRUPTCIES SUPERSEDED.

From Dec. 19, 1834, to Jan. 16, 1835, both inclusive, with Dates when gazetted.

Alopp, Richard, Eccleshall, Stafford, Miller. Jan. 9.  
Chapman, Joseph, Feltwell, Norfolk, Shopkeeper. Jan. 2.  
Dewhurst, Tho., Manchester, Printseller. Jan. 13.  
Jones, Horatio, Poultry, Chinaman. Jan. 9.  
Sandell, Edmund, Bristol, Stay Maker. Jan. 16.  
Wiseman, Isaac, Norwich, Silkman. Dec. 23.

## BANKRUPTS.

From Dec. 19, 1834, to Jan. 16, 1835, both inclusive, with Dates when gazetted.

Ashby, Samuel, Upper Thames Street, Flour & Groat Dealer. Parker, Fish Street Hill; Targuand, Off. Ass. Jan. 2.  
Brown, George Beale, Edmund Rowe Danson, & Charles Duncan, New Broad Street, Merchants. Willis & Co., Tokenhouse Yard; Waltham, Off. Ass. Dec. 19.  
Baxter, William, Longham, Norfolk, Builder & Carpenter. Beckwith & Co., Norwich; Clarke & Co., Lincoln's Inn Fields. Dec. 23.  
Boyce, Geo., Tiverton, Devon, Bookseller & Stationer. Dax & Co., Lincoln's Inn Fields; Loosemore & Co., Tiverton. Dec. 23.  
Bligh, Peter, Phillack, Cornwall, Grocer. Coods, Guilford Street; Puynter, Penzance. Jan. 2.  
Bagley, Geo., and John Evans, Lad Lane, Cheap-side, Warehousemen. Groom, Off. Ass.; Ashurst, New Bridge Street, Blackfriars. Jan. 16.  
Brown, Wm., High Street, Camberwell; Carpenter, Builder, & Ironmonger. Abbott, Off. Ass.; Hodson & Co., King's Road, Bedford Row. Jan. 9.  
Bassford, Timothy, Bilston, Stafford, Bookseller & Printer. Philpot & Son, Southampton Street, Bloomsbury; Phillips, Wolverhampton. Jan. 9.  
Buxton, Joseph, Barnard Castle, Durham, Wool Stapler & Wool Comber. Smithson & Co., Southampton Buildings, Chancery Lane; Barnes, Barnard Castle. Jan. 13.  
Berry, Charles Clare, Liverpool, Merchant. Blackstock & Co., Temple; Curry, Liverpool. Jan. 13.  
Clark, John Busby, High Street, Shadwell, Grocer. Bishop, Sergeants Inn, Chancery Lane; Cannon, Off. Ass. Dec. 19.  
Casey, Wm., Cow-Cross Street, Victualler. Gibson, Off. Ass. Upper, Broad Street. Dec. 19.  
Croser, Joseph, Geo. Walker, and John Cockram Walker, Newcastle-upon-Tyne, Ship and Insurance Brokers.

Meggison & Co., King's Road, Bedford Row; Stanton, Newcastle-upon-Tyne. Dec. 19.  
Chapman, Wm., Allensmore, Hereford, Timber Merchant. Gough, Hereford; Robinson, Queen Street Place, Southwark Bridge. Dec. 23.  
Clark, Charles, Stowey, Somerset, Chemist and Druggist. Lawrence & Co., Old Fish Street, Doctors' Commons; Cannas, Off. Ass. Dec. 30.  
Copping, Nicholas, & Thomas Wood, King Street, Cheap-side, Woollen & Stuff Agents. Bartlett & Co., Nicholas Lane; Johnson, Off. Ass. Jan. 13.  
Cowan, James, Gosport, Southampton, Slater. Clarke & Co., Lincoln's Inn Fields; Thorpe, Portsea. Jan. 13.  
Carnley, John, Kingston-upon-Hull, Upholster and Cabinet Maker. Holmes & Co., New Inn; Birks, Hemingfield, near Barnsley. Jan. 16.  
Driver, Thomas, Pemell's Terrace, Peckham, Surrey, Merchant & Master Mariner. Belcher, Off. Ass.; Brooking & Co., Lombard Street. Dec. 23.  
Dunn, Tho., Plummer, Cain's Cross, near Stroud, Gloucester, Wool Merchant. Harrison St. Mary-at-Hill, London; Waltham, Off. Ass. Dec. 26.  
Davies, George, Lissos Grove, Ironmonger. Pocock, Bartholomew Close; Whitmore, Off. Ass. Jan. 9.  
Elford, Rob., jun., Twickenham Common, Middlesex, Veterinary Surgeon. Cox, Bush Lane, Cannon Street; Graham, Off. Ass. Dec. 23.  
Emerson, Arthur, Lawrence Pountney Lane, Cannon Street, Lead & Tin Plate Merchant. Abbott, Off. Ass.; Rains, Lombard Street. Dec. 23.  
Emberlin, Wm., Deddington, Oxford, and Upton, Burford, Oxford, Paper Maker. Aplin, Banbury, and Furnival's Inn. Dec. 26.  
Ezekiel, Benjamin, Tiverton, Devon, Draper and Pawnbroker. Drake, Bouverie Street, Fleet Street; Turner & Co., Exeter. Dec. 26.  
Ellis, William, Portsea, Southampton, Timber Merchant. Goodree, Warwick Court, Gray's Inn; Muschin, Portsea. Dec. 30.  
Fraser, Robert, Middle Queen's Buildings, Brompton, Middlesex, Wine Merchant. Groom, Off. Ass.; Lawrence & Co., Bucklersbury. Dec. 23.  
Fleming, Wm., Birmingham, Merchant. Spurrer & Co., Birmingham; Norton & Co., Gray's Inn. Jan. 6.  
Goodacre, John, Barnsley, Silkstone, York, Linen Manufacturer. Sheppard, Leicester; Wimburn & Co., Chancery Lane. Dec. 26.  
Gilbert, John, sen., Woburn, Bedford, Innkeeper. King, Lyon's Inn; Whitmore, Off. Ass. Dec. 30.  
Green, Frederick, Clifford Street, Bond Street, Auctioneer & Estate Agent; and also of Green Street, Park Lane, & Mount Street, Grosvenor Square, Hotel Keeper. Jacobs, Crosby Square; Goldmid, Off. Ass. Jan. 6.  
Greenwood, Wm., Sutton-upon-Trent, Nottingham, Coal Dealer. Lee, Newark-upon-Trent; Milne & Co., Temple. Jan. 6.  
Glover, John, Walsall, Stafford, Ironfounder. Turner, Bloomsbury Square; Healey, Walsall. Jan. 13.  
Heighington, Benj., Darlington, Durham, Wine & Spirit Merchant. Byrland & Co., New Bridge Street, Blackfriars; Rymer, Darlington. Dec. 26.  
Hildesheimer, Peter David Levi, otherwise Peter Levi, New Road, Woolwich, Kent, Grocer. Gibson, Off. Ass.; Taylor & Co., Great James Street, Bedford Row. Jan. 2.  
Hales, Samuel, Newgate Street, Butcher. Smith, Southampton Buildings, Chancery Lane; Graham, Off. Ass. Jan. 9.  
Hayward, John, Tottenham Court Road, Butcher. Belcher, Off. Ass.; Elkins & Son, Newman Street, Oxford Street. Jan. 9.  
Holbrook, Tho., Gray's Inn Road, Victualler. Harris & Co., Golden Square; Targuand, Off. Ass. Jan. 9.  
Holdsworth, Wm., Sheffield, Spoon Manufacturer. Blake-lock & Co., Sergeants' Inn, Fleet Street; Smith, Sheffield. Jan. 9.  
Ingils, Wm., Houndsditch & Well Street, Cripplegate, Currier & Leather Seller. Nias, Cophall Court; Clark, Off. Ass. Jan. 16.  
Johnson, Tho., Petworth, Sussex, Surgeon & Apothecary. Green, Off. Ass.; Bolden, Southampton Street, Bloomsbury. Dec. 19.  
Jones, Stephen, New Sarum, Wilts, Bookseller. Hodding & Co., Salisbury; Hillier & Co., Raymond Buildings, Gray Inn. Dec. 19.  
Joshua, Geo., Brownlow Street, Drury Lane, Currier. Haslam & Co., Cophall Buildings; Lackington, Off. Ass. Jan. 16.  
Kendrick, John, Sidney Alley & Leicester Square, Printseller & Bookseller. Newben, Great Carter Lane, Doctors' Commons; Whitmore, Off. Ass. Dec. 19.  
Kadwell, Wm., Weston, Somerset, Victualler. Skurray, Bath; Williams & Co., Lincoln's Inn Fields. Dec. 23.  
Lane, Tho., Hereford, Seedsman, Mealman, & China, Glass, & Barthenware Seller. Robinson, Queen Street Place, Upper Thames Street; Pritchard, Hereford. Dec. 19.  
Langley, John, Bristol, Wine Merchant. Bloorer & Co., Lincoln's Inn Fields; Gregory & Co., Bristol. Jan. 13.  
Morrison, Rob., New Gloucester Street, Hoxton New Town, & Wilson Street, Finsbury Square, Carpenter & Builder. Calloway, Walbrook Buildings; Clark, Off. Ass. Dec. 23.  
Marsh, John, Hapworth, Kirkburton, York, Clothier. Batty & Co., Chancery Lane; Stephenson, Holmāth, near Huddersfield. Jan. 9.

Matthew, Thomas, Margaret Street, Cavendish Square, Coach Maker. *Lawrence*, Lyon's Inn, Strand; *Clark*, Off. Ass. Jan. 13.

Moore, Francis, jun., Westmoreland Place, Walworth Common, Surrey Vinegar Merchant. *Green*, Off. Ass.; Messrs. *Gossett*, Queen Street, Cheapside. Jan. 16.

Marston, John, Nuneston, Warwick, Grocer & Chandler. *Harding*, Birmingham; *Parke*, South Square, Gray's Inn. Jan. 16.

Newington, Henry Hyland, High Street, Southwark, Chinaman. *Belcher*, Off. Ass.; *Scott* & Co., St. Mildred's Court, Poultry. Dec. 30.

Newport, Wm. Charles, Bognor, Sussex, Scrivener. *Groom*, Off. Ass.; *Fowler*, Lincoln's Inn Fields. Jan. 9.

Norris, Bethell, Oxford Street, Chemist & Druggist. *Tanner & Son*, Percy Street, Bathbone Place; *Graham*, Off. Ass. Jan. 16.

Oakley, Elizabeth, Wimborne Minster, Dorset, Linen Draper & Mercer. *Castleman*, & Co., Wimborne; *Stephens*, Doughty Street. Dec. 19.

Owen, Henry, Liverpool, Miller. *Roxlinton & Co.*, Southampton Buildings, Chancery Lane; *Roxlinton & Co.*, Liverpool. Jan. 6.

Pyke, Tho., Liverpool, Corn Merchant. *Leigh*, George Street, Mansion House; *Müller & Co.*, or *Leather*, Liverpool. Dec. 23.

Parkins, James, King William Street, London Bridge, Tailor. *Green*, Off. Ass.; *Thompson*, George Street, Minorities. Dec. 30.

Philpott, James, Belle-Sauvage-Yard, Ludgate Hill, Innkeeper & Victualler. *Gibson*, Off. Ass.; *Shrimpton & Co.*, Staple Inn. Jan. 13.

Prie, Wm. Dickinson, Chepstow, Monmouth, Innkeeper. *White & Co.*, Bedford Row; *Broom & Co.*, Bristol. Jan. 13.

Robinson, John, Whitehaven, Cumberland, Bookseller. *Walker*, Whitehaven; Messrs. *Helder*, Clement's Inn. Dec. 26.

Race, Jones, Wells, next the Sea, Norfolk, Grocer & Draper. *Faithful*, King's Road, Bedford Row; *Lognes*, Wells next the Sea. Dec. 26.

Richardson, Henry John Allen Gilmour, Upper Norton Street, Portland Place, Commission Agent & Bill Broker. *Gates*, Lime Street; *Goldmid*, Off. Ass. Jan. 2.

Rix, Henry, Harp Lane, Tower Street, Cork Merchant, & Manufacturer. *Edwards*, Off. Ass.; *Witherby*, Nicholas Lane, Lombard Street. Jan. 6.

Robinson, Wm., Manchester, Coach Proprietor. *Lake*, Cateaton Street; *Foster*, Manchester. Jan. 9.

Rotherham, Wm., Shoreditch, Draper. *Bricker*, Off. Ass.; *Parker*, St. Paul's Churchyard. Jan. 13.

Richardson, Wm., Godstone, Surrey, Innkeeper, & Wine & Brandy Merchant. *Edwards*, Off. Ass.; *Digman*, King Street, Holborn. Jan. 16.

Raymond, Walter, Streatham Place, Brixton Hill, Surrey, Ship Owner. *Bazendale & Co.*, Great Winchester Street; *Goldmid*, Off. Ass. Jan. 16.

Shepherd, Wm., Harrop Green, Saddleworth, York, Merchant & Woollen Manufacturer. *Miles & Co.*, Temple; *Whithead & Co.*, Oldham. Dec. 16.

Stephenson, Rowland Macdonald, & Charles James Blunt, Great Ormond Street, Queen Square, Civil Engineers, Surveyors and Publishers. *Edwards*, Off. Ass.; *Webber*, Caroline Street, Bedford Square. Dec. 30.

Solomon, Isaac, and Benjamin Aaron, Bristol, Woollen Drapers, Tailors, & Sale-men. *Poole & Co.*, Gray's Inn Square; *Williams*, Bristol. Jan. 2.

Shadgett, Benjamin, Loose, Kent, Carpenter & Fruiterer. *Green*, Off. Ass.; *Sheringham*, Old Boswell Court. Jan. 9.

Speight, Sam., Brick Lane, Spitalfields, Chemist & Druggist. *Abbott*, Off. Ass.; *Farrer*, Great Knight Rider Street, Doctors Commons. Jan. 6.

Sedd, James, Jewry Street, Aldgate, Victualler. *Edwards*, Off. Ass.; *Thomson*, George St., Minorities. Jan. 13.

Simpson, John, & James Windross, Bishopsgate Street, Linen Drapers. *Jones*, Size Lane; *Waikman*, Off. Ass. Jan. 13.

Strachan, John, Bristol, Tailor. *White & Co.*, Bedford Row; *Brown & Co.*, Bristol. Jan. 13.

Stevenson, Wm., Princes Street, Westminster, Dealer in Mahogany & Timber. *Hamilton*, Berners Street, Oxford Street; *Whitmore*, Off. Ass. Jan. 16.

Tomlinson, Sam., Liverpool, Corn Merchant. *Taylor & Co.*, Bedford Row; *Louand & Co.*, Liverpool. Dec. 19.

Vollans, Joshua, sen., David Vollans, & Joshua Vollans, jun., Leeds, York, Woollen Cloth Manufacturers, & Woollen Warehousemen. *Tarner*, Basing Lane, Cheapside; *Stott*, Leeds. Dec. 30.

Windross, James, Bishopsgate Without, Linen Draper. *Lloyd*, Crown Court, Cheapside; *Johnson*, Off. Ass. Jan. 2.

Wigan, James, Pine Apple Place, Kilburn Priory, Edgware Road, Music Seller & Dealer in Musical Instruments. *Gibson*, Off. Ass.; *Borradale & Co.*, King's Arms Yard, Coleman Street. Jan. 16.

Whitten, Joseph, Liverpool, Merchant. *Chester*, Staple Inn; *Morecroft*, Liverpool. Dec. 19.

Wood, Edward Gittins, Liverpool, Common Brewer. *Loose & Co.*, Southampton Buildings, Chancery Lane; *Wilkinson & Co.*, Liverpool. Dec. 23.

Wigglesworth, James, Liverpool, Grocer & Spirit Dealer. *Chesser*, Staple Inn; *Morecroft*, Liverpool. Dec. 26.

Winterbottom, Rob., Furlane Saddleworth, York, Woollen Manufacturer & Merchant. *Rickards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Dec. 30.

Winterbottom, Wm. Charles, & Walter Dickson, Oldham, Lancaster, Fustian Manufacturers. *Halfeld & Co.*, Manchester; *Johnson & Co.*, Temple. Dec. 30.

Yates, Richard, Manchester, Innkeeper & Coal Agent. *Mathinson & Co.*, Temple; *Barlow*, Manchester. Dec. 30.

# DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 19, 1884, to Jan. 16, 1885, both inclusive, with Dates when gazetted.

The names printed in *Italics* are the Partners who receive and pay debts.

Alliston, John, Frederick Lock, Henley Smith, & Charles Alliston, Freeman's Court, Cornhill, Attorneys and Solicitors; so far as regards John Alliston. Jan. 2.

Brown, Peter, and James Osborne, Macclesfield, Chester, Attorneys and Solicitors. Jan. 2.

Eastin, Alfred, and William Ball, Bristol, Attorneys at Law, Solicitors and Conveyancers. Dec. 23.

Holroyde, William Ferguson, and John Holroyde, Halifax & Sowerby Bridge, York, Attorneys & Solicitors. Jan. 6.

Stringer, William, and George Stringer, New Romney, Kent, Attorneys. Jan. 2.

Wilton, Joseph Robert, and Edward James Barker, John Street, Bedford Row, Attorneys and Solicitors. Jan. 2.

## THE EDITOR'S LETTER BOX.

*Note on the Dissertation on Conveyancing, ante, p. 228.*—It is here stated, that in the case of *Wills v. Snyer*, 4 Madd. 411, Sir John Leach observed, "that a gift to a wife for her separate use is no declaration of an intention to give the property to her separate use." It should be, "a gift to the wife for her use is no declaration of an intention to create a trust for her sole and separate use." And as to the case of *Darley v. Darley*, 3 Atk. 399, cited *ante*, p. 229, see *Lee v. Prideaux*, 3 B. C. C. 381, by which it appears that the case of *Darley v. Darley* is incorrectly reported by Atkyns.

The Queries and Answers of "A Subscriber;" and "A Trustee;" are under consideration.

We have now disposed of all the arrears of the Queries and Answers, and nearly all the Correspondence: so that we expect to avoid the necessity of any more double numbers.

In consequence of some additional information which we are promised, the Obituary for 1834 has been deferred until the next, or an early number.

Part I. of the Quarterly Digest of all Reported Cases, will be published about the middle of February.

We are much obliged to "An original Subscriber," for the Plan of the Law College which he has sent us. We have seen all the publications of the projector, which were rather voluminous on the subject. The plan shall be returned according as our correspondent may direct.

The suggestions of the same correspondent regarding the Legal Almanack, shall be attended to.

*Erratum, p. 254.*—In the 12th line of the Answer of T. B. to the Quære on the return of a Writ of Execution, for *suppose*, read *supposes*. The clause in which this occurs forms part of the previous sentence.

# The Legal Observer.

Vol. IX.

SATURDAY, FEBRUARY 7, 1835.

No. CCLII.

———“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE REFORM OF THE INNS OF COURT.

We have from time to time devoted a very considerable portion of our space to the present system of Legal Education as it is pursued in the Inns of Court, and we think we have proved that a very extensive reform is necessary. The learned Common Law Commissioners, in their Report on the subject, confined their investigations and suggestions to a part of the subject only. In reviewing their Report<sup>a</sup> we pointed out the portions which met our concurrence, and regretted that the Commissioners had not gone farther into the inquiry.

Our view has been recently justified by one beneficial alteration having been effected in the Inns of Court, which was not recommended, nor even alluded to, by the learned Commissioners.

Until last Hilary Term the rule<sup>b</sup> of all the Inns of Court was, that when a student was not a member of one of the Universities of Oxford, Cambridge, or Dublin, he had to deposit 100*l.* previous to his keeping twelve terms, and have his name for five years on the books previous to being called to the bar; whereas if he had taken the degree of Master of Arts, or Bachelor of Laws, he was not required to pay the 100*l.*, and three years standing on the books only were required before he could be called.

By a late resolution of all the Inns of Court, which originated at the Inner Temple, on the motion of the Attorney General,

this preference to graduates of these Universities is to be abolished, and the new rules, which we subjoin, are to be substituted.

We have great satisfaction in stating this alteration. It is intended, we believe, more especially, as a boon to Dissenters, on whom, undoubtedly, the former regulation pressed with peculiar severity; but we think it will also be attended with general benefit. We have no wish to undervalue the advantages of an education at these Universities; but certain it is, that although three-fourths of the bar have probably received them, we do not find that barristers thus educated attain great eminence in their profession in the same proportion. Without going back to the Hardwickses and the Saunders's, let us take the lawyers of the present day, and we shall find that the great honours have been nearly equally divided between those who have been educated at these Universities and those who have not had this advantage. The present Lord Chancellor was; the late Lord Chancellor was not so educated; the present Lord Chancellor of Ireland was not; the late Lord Chancellor of Ireland was; the late Attorney General was not; the present Attorney General was; the late Master of the Rolls was not; the present Master of the Rolls was; the late Vice Chancellor was not; the present Vice Chancellor was, and so on. A man of ability and industry will distinguish himself wherever he is placed; and he who brought away a high University reputation will probably retain it in the law; but certainly it is never required to attain eminence in that profession. It constantly and very naturally happens, and we have splendid illustrations of it in

<sup>a</sup> See 7 L. O. 513.

<sup>b</sup> See them stated fully in the Legal Almanack and Remembrancer for 1835, pp. 54—63.

many of the names to which we have just adverted, that the most distinguished University men have borne off the highest honours of the law; but it has not been on account of their University learning, but because they have made themselves eminent as lawyers. The old story against the newly selected senior wrangler, who would not come to London "until the affair had blown over a little," is familiar enough; and just as absurd would he be who supposed that he should attain eminence in the law on the mere support of his University honours. If he succeeds they will be remembered, otherwise they will soon be forgotten. The Law List is consulted, and not the Oxford Calendar; and Lord Coke will do the aspirant for legal distinction much more good in his profession than twenty gold medals.

This being the state of facts, it is idle to suppose that the rendering a University education of no service in attaining a law degree can be of any injury either to the respectability or the talent of the bar. We should certainly think that the effect of the new regulations will be to discourage the placing young men intended for the law at an English University: but any disadvantage likely to arise from this will be remedied by the other part of the new rules, which makes the required age of a candidate for the bar twenty-four, instead of twenty-one.

Let it not be supposed from any thing that we have said, that we would undervalue classical or general knowledge in the law-student—they are indispensable to his success; but as they can be acquired at other places than the English and Irish Universities, we have always considered it unjust that a great advantage should be given to the persons who had acquired them there.

We cannot but still express a hope that reform has but commenced in the present system of legal education, and that it will be followed by the institution of public lectures in all the Inns of Court,<sup>a</sup> and a public and severe examination, before any degree in the law is conferred.

The following are the resolutions proposed by the Attorney General, at the Inner Temple:

"That it is expedient that it be proposed to the other Societies that so much of the Bench regulation of the 22d of June,

1798, as exempts members of Oxford, Cambridge, and Dublin Universities from the deposit of 100*l.* prior to keeping terms, be rescinded.

"And also that it be proposed to the other Societies that all persons of the full age of twenty-four and upwards be admitted to the bar after keeping twelve terms, provided during five years immediately prior to the call they had not been in any trade or business, and in all other respects be entitled to be called to the bar, according to the existing usages, orders, and regulations of the several Inns of Court.

"Ordered, that the above proposals be submitted to each of the Inns of Court, and that they be requested to depute three or more of their Bench to meet in the Parliament Chamber of this Society, on Thursday, the 29th of January, at three o'clock precisely, to take the same into consideration, with a view to their being adopted by the four Inns of Court."

See *post*, 304.

#### ON LIMITATIONS TO THE SEPARATE USE OF A WOMAN.

We have very recently collected most of the cases relating to the subject of Limitations to the separate use of a Woman.\* As the subject is at the present time much canvassed in the profession, we shall add more fully one or two cases, to which we then only adverted.

It seems clear, that if the words of the limitation be not otherwise sufficiently strong, to shew an intention to create a trust for the separate use of a woman, the circumstance of the husband being made a trustee, will not have this effect. In *Ex parte Beilby*;<sup>b</sup> there was a bequest to two trustees, one of whom was the husband, in trust for the wife for life, and after her death for the benefit of the children; and Sir *Jas Leach*, V.C., said, "with respect to the claim of the wife to be considered as entitled to this trust fund for her separate use, because her husband was named a trustee of the fund, it is to be observed, that the husband is not the only trustee, and that the two trustees named, are trustees not for this particular fund, but for all the purposes of the will; and there is no sufficient ground, therefore, for the inference, that the testator must have intended that she should take the

<sup>a</sup> The Inner Temple has, in this respect, also led the way, by the institution of Law Lectures.

\* See *ante*, p. 228; and also a note respecting it, *ante*, p. 161. <sup>b</sup> 1 Gl. & Jam. 167.

life interest to her separate use. What might be the inference, if the husband were the sole trustee of a particular fund given to the wife for life, it is not now necessary to determine."

In a later case before the same judge, when Master of the Rolls,<sup>b</sup> he adhered to the same opinion. There, by a marriage settlement of a widow, her property was assigned to two trustees, upon trust to invest and pay the dividends to her for her life, for her own sole and separate use, and after her decease, upon trust to pay the fund to her daughter by her first husband, "for her own use and benefit." The daughter's husband F. H., was one of the trustees of the settlement; on his becoming bankrupt, the question was, whether the daughter was entitled to the fund for her separate use.

The Master of the Rolls said, "the intention to give a separate estate must be clearly expressed. A gift to a wife for her own use and benefit, does not clearly express such an intention; nor does a gift to a husband for his wife's own use and benefit. The husband being one of the trustees of a settlement, clearly indicates such an intention, more especially when it is considered, that in this case a trust for the separate use of a married woman, is clearly expressed in the preceding part of the settlement. The Court cannot infer, that the same effect was intended to be given to different expressions."

In a very late case,<sup>c</sup> the Vice Chancellor has expressed a wish, that the subject of Limitations to the separate Use of a Woman, may be brought before the present Lord Chancellor, with the view of settling the doubts now resting on it; and we trust that this will soon be done, as certainly considerable practical difficulty has arisen out of the recent decisions respecting it.

## THE PROPERTY LAWYER. No. XXXIX.

### AMENDMENT OF FINE.

The following case on the recent Act for abolishing Fines, (3 & 4 W. 4, c. 74,) is of some interest:

By that statute, s. 7, it is enacted, "that if it shall be apparent, from the deed declaring the uses of any fine already levied, or hereafter to be levied, that there is in the indentures, record,

or any of the proceedings of such fine, any error in the name of the conusor, or conusee of such fine, or any misdescription or omission of lands intended to have been passed by such fine, then and in every such case the fine, without any amendment of the indentures, record, or proceedings in which such error, misdescription, or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription, or omission." The question was, whether the section excluded the jurisdiction of the Court in matters of amendment, it being by section 9, expressly reserved, in cases not provided for by the act. On an application being made to rectify a mistake in a fine, as to the parish in which the premises were situate—

Tindal, C. J., said, "here is a misdescription apparent on the face of the instrument, within the meaning of sec. 7, of 3 & 4 W. 4. If we accede to the application, we shall be in the same situation as before the act—called on to amend, upon every conveyancer's doubt; and all the expense will be incurred, which the act was passed to prevent. Without deciding the question of jurisdiction, we think that under sec. 7, there is no need of our interference."

Lockington, dem. Shipley & Ux. con. 1 Bing. 355, N. S.

## REVIEW.

*A Summary of the History and Law of Usury, with an Examination of the Policy of the existing System, and Suggestions for its Amendment; together with an Analysis of the Parliamentary Proceedings relative to the subject, up to the present time, and a Collection of Statutes.* By James Birch Kelly, of the Inner Temple. Kennett.

As practical lawyers, it is no part of our business to enter into an elaborate examination of the policy of the Usury Laws, or to discuss all the various grounds on which they are sought to be altered in reference to the interests of the commercial part of the country, or those on which they are defended, for the sake of the landed proprietors. We shall, however, briefly state the arguments on both sides.

The late Mr. Serjeant Onslow rendered the endeavours to repeal these laws somewhat ridiculous, by repeating his motion when there was no chance of success, and bringing it forward, session after session, like a man determined to ride his hobby-

<sup>b</sup> Kensington v. Dollond, 2 Myl. & K. 184.

<sup>c</sup> Benson v. Benson, Jan. 19, V. C.

horse in opposition to the advice of all his friends and acquaintance.

Since, however, the learned Serjeant ceased his labours, a material modification has taken place by the 7th section of the 3 & 4 W. 4, c. 98, under which bills and notes, not exceeding three months' date, or having only three months to run, may be discounted at any rate of interest. See 7 L. O. 52.

The present author is not content with this alteration, but contends for a more comprehensive change. The following is a statement of his recommendations, and the principal reasons in support of them.

"That while the law should be allowed to remain as at present, with regard to money advanced as a charge on landed or real property, which affords ample security as well for the return of the principal as the due payment of the interest, the market should be thrown open to those who are disposed to lend their money on contingent, personal, or terminable securities, leaving such market, like every other, to accommodate itself to the relative nature of the supply and the demand."

"The hardships and mischiefs of a restrictive system are obvious, for as no one will lend money for less than it is worth, and at such periods it is worth more than legal interest, the borrower, if he obtained it at all, must do so by an evasion of the law; and as the lender runs the risk of forfeiting *treble* the value of his loan, by accepting more than what the law has deemed the proper compensation for the use of money, the unhappy borrower, if his bill exceed three months, is still obliged, in addition to the remuneration for the loan, to insure his creditor against the penalties of Usury; thus the borrower's difficulties are increased, and his situation rendered worse, by the inexpediency of the very laws made for his protection. The limited period of three months is, in many cases, of little avail to a merchant, who relies on the means of repayment on the arrival of a cargo from a distant shore; and since the China trade is thrown open, the number of those who depend on the forbearance of money for a much longer period must be considerably increased.

"If a manufacturer, or a tradesman, must have money for a longer period than three months, (for the renewal of bills cannot, from the contingency of death, and the ever-varying circumstances of the times, be relied on,) he must either borrow it at an unnecessarily increased rate of interest, or, as *Lord Bacon* observes, "*be forced to sell his means (be it land or goods,) far under their value; and as Usury doth but gnaw upon him, bad markets would swallow him quite up.*"

"Now it is conceived the merchant, or manufacturer, with his eyes open, provided he be neither a minor (which rarely happens) of weak mind, under duress, or circumvented by

fraud (and for all such cases, be it remembered, the Courts of Westminster afford ample relief,) if free from these disqualifications, he is quite as competent as the legislature to judge whether or not it will be to his advantage to borrow at the rate of 10 or 12 *per cent.*; for if he be deemed incompetent in perfect freedom to borrow on fair terms, and liable to be imposed upon, owing to the pressure and urgency of his necessities, how can he be deemed more competent (the same causes operating) to sell either his goods, his life-estate, his leasehold, or his reversion, to bargain for the giving a post obit bond, or granting an annuity? If borrowing at 10 *per cent.* would, at the time, be the means of his making 20 *per cent.*, or three times that sum, by turning his capital frequently in the course of the year, or prevent the loss of 20 or 30 *per cent.* by a forced sale, or preserve his credit, which may be invaluable and beyond the power of computation, it is difficult to conceive why he should be debarred from doing so; no good reason has yet been assigned, nor is it possible to imagine one. Yet the law, in its kindness, precludes him from borrowing, on what it deems disadvantageous terms, but cannot prevent his selling on any terms, however ruinous, though every one knows that the loss he would sustain in borrowing at an increased rate of interest, may bear but a small proportion to what he might suffer by a forced sale."

"The adoption of this plan, or what seems preferable, removing all restrictions upon pecuniary bargains (excepting mortgages and other securities on land), would be attended with the happiest results to the trading part of the community, and avert the hostility of the landowners who have hitherto strenuously and successfully opposed in parliament the abolition of the Usury Laws, on the grounds that they would unhinge existing mortgages and other contracts, and throw the landed interest, already heavily burthened, into confusion, induce the Bank of England to increase its rate of interest upon mortgages, and, finally, by sacrificing the welfare of the many to the few, would place the country gentleman at the mercy of the capitalist, and give the monied men the preponderance in parliament. Much of the money, they contend, now lent on mortgages (if these laws were abolished) would be called in when cash was scarce, to be employed at a greater interest elsewhere, or if left, would only be so on condition of their paying a higher rate of interest for it, as the competition would then be with the borrowers, and not, as now, with the lenders of money.

"These objects, we are bound to confess, are not without weight, as the land is at present subject to many exclusive burthens, which press heavily upon it; the money raised for the maintenance of the poor (hitherto an increasing weight) is paid entirely by the land, for persons in trade contribute only as far as they are owners or occupiers of real property; while, on the one hand, the farmer is subject to bad seasons, and the landlord to reduction, or loss of rent, the former is prevented, by the

operation of the corn laws, from enjoying the full advantage of a series of abundant harvests, the latter, from the same cause, from raising his rents: and when to these are added the expence and exposure incidental to the renewal of mortgages (for assignments of them without reinvestigation of title are very rare in practice) it will be readily seen how much more the land-owner is at the mercy of his creditor than the merchant or tradesman, who has borrowed on a bill of lading or a dock-warrant, which is capable of being transferred by indorsement, with privacy, and at little or no expense."

The proposal of Mr. Kelly, to except landed securities from the operation of the repeal of the Usury Laws, is a very important modification of the design of Mr. Serjt. Onslow; but it is open to the remark that *it concedes the principle* of restraining the rate of interest; and even as regards the commercial classes themselves, the evidence is not entirely on one side, for we have the opposing testimony of Mr. Rothschild, a man very competent to form a sound opinion on the subject. He says,

"I think the operation of the Usury Law, as bearing upon the value of money in England, of great importance to tradesmen. In this country it is different to those on the continent: a bill drawn upon such persons is seldom, if ever, seen; while in this country they abound, and are doubtless a great and necessary accommodation to that part of the community. Small manufacturers, likewise, derive many advantages from this kind of assistance, as many of them have friends or a confidential person in town, on whom they draw at short dates, against their goods sent to the London market. These bills become negotiable at the legal rate of five per cent. discount, which enables such persons to carry on their concern, not only with more facility and advantage, but to a much greater extent. It is impossible for me to say positively what would be the consequence to these, and many others of a similar description, were the Usury Laws repealed; but I believe great advantage would, in many cases, be taken of the necessities of such persons by the lender demanding, probably, two or three times the rate of interest from them on this security, as would be required in discounting the bills of first and second-rate houses; therefore, it appears to me that *the less opulent should be protected in some way from being exposed to so great a reduction in their profits*, through the necessity of turning their capitals, by immediately discounting their drafts at an extravagant rate; those persons not having hitherto had much difficulty in discounting their bills at the legal rate of five per cent. discount."

Our limits will not permit us to enter into all the arguments which have been

urged in defence of the Usury Laws: but the following may serve as a summary,—which we extract from a pamphlet on the opposite side of the question; and we think it right that our readers should be reminded of some at least of the grounds on which they have been supported.

"The object of the enactments against usury is to benefit the community at large;—to encourage productive labour, by the employment of capital at a reasonable rate;—to check the tendency of a system that, if permitted, would absorb too much of the profits of industry, and afford increased temptation to idleness;—to give, so far as human affairs will permit, stability to every kind of property, and to fix a general standard by which its value may be permanently ascertained.

"A general system of borrowing is an evil; its facility diminishes prudence, and it is unwise to offer excessive temptations for the loan of money on deficient security. The nature of money differs from all other species of property, and may therefore, consistently, be the subject of regulation differing from those which prevail in other cases.

"In considering the effects of the law on the trading community, although the repeal might not injure the *first rate* merchant, whose credit stands next to that of the government, the *inferior classes* of trade and manufacture, which constitute the great bulk of the nation, would become the prey to every species of extortion; for them, there would be no general market-rate, because they have not the marketable security; and they would be thrown, therefore, in each instance, of necessity, upon the mercy of the money-lender.

"The nation has increased in wealth from age to age; commerce and agriculture have advanced, and the Law has followed with equal steps, and in no instance attempted to precede, the progress of these successive improvements. Of all other laws, it has been the least speculative: it has taken experience for its guide, and shaped its course by the gradual increase of national prosperity. As the average profit of industry has diminished, the rate of interest for the use of capital has been reduced; and thus it has left to skill and labour their proportionate reward."

Having thus noticed the policy of the law, we now come to the practical part of the work before us. In treating of the present state of the law, Mr. Kelly has arranged the subject in the following order:

I. Of agreements and transactions which have for the most part been deemed within the statute, and usurious. 1. Where the borrower has been furnished with goods instead of cash. 2. Discounting bills, not of a mercantile nature. 3. Where an extra

\* Treatise on the Principles of the Usury Laws, by R. Maugham.



charge has been made for brokerage, &c. 4. Compound interest on mortgages, &c. 5. Where the risk of losing the principal is slight. 6. Where the interest only is risked. 7. Retiring partners. 8. Stipulations made on the transfer of stock by way of loan. 9. Where something besides money has been given or contracted for in consideration of the loan.

II. Of agreements and transactions which for the most part have not been deemed usurious: 1. Where the usury is incurred by mistake. 2. Where the principal is *bona fide* hazarded. 3. *Post obit* bonds. 4. Loans on contingencies. 5. Where the transaction is by way of annuity. 6. Usage of trade, prompt payment, &c. 7. Where the penalty is for non-payment. 8. Foreign interest.

III. Consequences of Usury: 1. Where securities are void. 2. Renewed or substituted securities. 3. How third parties, not privy to the usury, are affected by it. 4. Sureties, and how affected by usury. 5. Consequences of usury.

IV. Relief in cases of Usury: 1. At law. 2. In equity. 3. Bankruptcy. 4. Evidence on usurious contracts.

V. Penalties of Usury; 1. Who are liable. 2. Proceedings for penalties. 3. Where the action must be brought. 4. Compounding actions *qui tam*. 5. Evidence in actions for penalties. 6. Indictment.

We think this arrangement a good one, and as many years have elapsed since Mr. Comyn's work was published, and some material alterations have been made by statute, and many decisions have taken place, a new treatise on the subject was needed, which we think Mr. Kelly has accurately and ably compiled.

When the general question next comes before Parliament, we shall probably consider more at large the policy of the laws, and the alteration which it may be safe to make. We can have no interest in opposing the repeal; for if the effect should be, as anticipated, to render the circulating medium more extensive, and every species of transaction more numerous, we, as well as lawyers in general, must partake of the advantage.

## OF PRIVILEGED VILLENAGE AND SPIRITUAL TENURE;

A COMMENTARY ON CHAP. VI pp. 91—103,  
BOOK II. OF SIR WM. BLACKSTONE.

THERE is a species of *tenure*, described by Bracton, under the name sometimes of *Privileged Villenage*, and sometimes of *Villein Socage*<sup>a</sup>. This, he tells us<sup>b</sup>, is such as has been held of the Kings of England from the Conquest downwards; that the tenants herein, "*Villani faciunt servitia, sed certa et determinata*," that they cannot aliene or transfer their tenements by the strict common law conveyances of grant or feoffment, any more than pure villeins can; but must surrender them to the lord or his steward, to be again granted out and held in villenage. And from these circumstances we may collect, that what he here describes is no other than an exalted species of copyhold, and as such preserved and exempted from the operation of the statute of Charles II. <sup>c</sup>, subsisting at this day, viz. the tenure in *Ancient Demesne*; to which, as partaking of the baseness of villenage in the nature of its *services*, and the freedom of *socage* in their *certainly*, he has therefore given a name compounded out of both, and calls it *villanum socagium*. *Ancient Demesne* consists of those lands or manors which, though now perhaps granted out to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror; and so appear to have been by the Great Survey in the Exchequer, called *Domesday Book*<sup>d</sup>, and which can only be determined whether they be actually *Ancient Demesne* Manors<sup>e</sup> or not, by reference to that book, wherein the manors formerly in the possession of King Edward, are called *Terræ Regiæ Edwardi*, and those which belonged to the Conqueror<sup>f</sup> are named *Terræ Regiæ*<sup>g</sup>.

<sup>a</sup> See 2 Bl. Com. p. 61.

<sup>b</sup> L. 4, tr. 1, c. 28.

<sup>c</sup> The 7th section of the statute for the Abolition of Tenures, 12 Car. 2. c. 24, provides that that act shall not alter or change any *tenure by copy of Court Roll*, or any *services* incident thereto.

<sup>d</sup> F. N. B. 14. 56.

<sup>e</sup> 2 Burrow's Rep. 1048. 3 Bl. Com. 331.

<sup>f</sup> As nearly as can be ascertained, King William the Conqueror himself held 1290 manors, exclusive of berewicks and sokes. Of these, about 350 had, in some shape, belonged to the Crown; they are spoken of as the King's, or had been old *Demesne de firma Regni*. About 165 are entered as having been held by King Edward the Confessor.—See Sir H. Ellis's General Introduction to Domesday Book, Vol. I. p. 476, note.

<sup>g</sup> Vide Scriven on Copyholds, p. 651, and the cases there referred to.

The tenants in *Ancient Demesne* are of three kinds.—1. *Tenants in Ancient Demesne*;—2. *Privileged Copyholders, Customary Freeholders, or Free Copyholders*;—and, 3. *Copyholders of base Tenure*<sup>a</sup>.

1. *Tenants in Ancient Demesne* are those who hold their lands *freely* by grant from the crown, being only bound in respect of their lands to perform some of the *better sort of villen services*, but those determinate and *cermin*; as, to plough the king's land for so many days, to supply his *court* with such a quantity of provisions, or other stated services; all of which are now changed into pecuniary rents, and in consideration hereof they had many immunities and privileges granted to them<sup>1</sup>, as to try the right of their property in a peculiar Court of their own, called a Court of *Ancient Demesne*<sup>1</sup>, by a peculiar process, denominated a writ of *right close*<sup>2</sup>; to have a writ of *monstraverunt*; not to pay toll or taxes; not to contribute to the expenses of knights of the shire; not to be put on juries<sup>3</sup>, and the like<sup>4</sup>.

2. *Privileged Copyholders, Customary Freeholders*<sup>a</sup>, or *free Copyholders*, are such as generally hold their lands of a manor, which is *Ancient Demesne* according to the custom of the manor, but not at the will of the lord; and they also had, in respect of their lands, the same *privileges* as the former. These tenants, therefore, though their tenure be absolutely *copyhold*<sup>a</sup>, yet have an *interest* equivalent to a freehold<sup>5</sup>; for notwithstanding their services

were of a base and villenous original<sup>6</sup>, yet the tenants were esteemed in all other respects to be highly *privileged* villeins, and especially for that their services were fixed and determinate, and that they could not be compelled (like *common copyholders*, and copyholders of *base tenure*), to relinquish these tenements at the lord's will, or to hold them against their own<sup>7</sup>; "et ideo," says *Bracton* "*dicuntur liberi*." *Britton* also, from such their freedom, calls them absolutely *sokemans*, and their tenure *sokemaries*; which he describes<sup>8</sup> to be "lands and tenements, which are not held by knight service, nor by grand serjeanty, nor by petit, but by simple services; being, as it were, lands enfranchised by the King, or his predecessors, from their *ancient demesne*." And the same name is also given

448. Though where the *special* custom of a manor requires a bargain and sale, as well as a surrender and admittance to pass the customary tenements, the freehold is not in the lord, but in the tenant. *Bingham v. Woodgate*, 1 Russ. & Mylne. 32.

<sup>a</sup> Gilb. Hist. of Exch. 16 & 30.

<sup>1</sup> See Hargr. Co. Litt. n. 1, 59 b.

<sup>2</sup> C. 66.

<sup>3</sup> Lord Coke calls them (Cop. s. 39), "*copyholds of frank tenure*," and remarks, that they are most usual in *ancient demesne*; though sometimes out of *ancient demesne* we meet with the like sort of copyholds. To the latter kind, may be referred those *customary tenements* in the north of England, which are parcels of the respective manors in which they are situate, and descendible from ancestor to heir by the hereditary right, called *tenant-right*, and are held of the lord according to the custom of the manor. See *Burrell v. Dodd*, 3 Bos. & Pul. 378. These customary estates, known by the denomination of *tenant-right*, are peculiar to the northern parts of England, in which border services against Scotland were anciently performed. And although these appear to have many qualities and incidents, which do not properly and ordinarily belong to *villennage* tenure, either *pure* or *privileged*, (and out of one or other of these species of villenage, all copyhold is derived), and also have some, which savour more of military tenure by *escuage uncertain*, which according to Littleton, (s. 99,) is *knight's service*; and although they seem to want some of the characteristic qualities and circumstances, which are considered as distinguishing this species of tenure, viz:—the being holden at the will of the lord, and also the usual evidence of title by copy of Court Roll; and are alienable also, contrary to the usual mode by which copyholds are aliened, viz:—by deed and admittance thereon. Notwithstanding all these anomalous circumstances, it seems to be now so far settled, that these *customary tenant right* estates, are not freehold, but that they in effect, fall within the same consideration as copyholds.—Per Ellenborough, C. J., in *Doe d. Reay v. Huntington*, 4 East, 288. In the county palatine of Dur-

<sup>a</sup> See Scriven (on Copyholds) Chap. 16, Of *Ancient Demesne*, p. 656.

<sup>1</sup> 4 Inst. 269.

<sup>2</sup> The Court of *Ancient Demesne* is a Court *Baron*, and not a Court of Record. 4 Inst. 269. A plea to the jurisdiction of a superior Court is allowed that the lands are *ancient Demesne*, holden of the King's Manor. 10 East. 523; 2 Burr. 1046; 8 T. R. 474; 3 Wils. 51; and see, 1 Chitty on Pleading, 477—480.

<sup>3</sup> F. N. B. 11.

<sup>4</sup> Tenants in ancient demesne, and copyholders, were first made liable to serve on juries in the King's Courts, by statute 4 & 5 W. & M. c. 24, s. 15; which statute was repealed, but the like provisions are continued by the consolidated Act, 6 G. 4, c. 50. s. 1.

<sup>5</sup> *Ibid.* 14.

<sup>6</sup> The term *customary freeholders*, is incorrect, and apt to mislead the student; for these tenants hold their lands by *copy* of Court Roll, and are in fact *copyholders*; therefore, the term *free copyholders*, is more correct.

<sup>7</sup> In general, the nature and incidents of *customary freeholds*, are the same as those of *common copyholds*, and they are regulated by the same rules of law. 4 East, 271, and 7 East, 321.

<sup>8</sup> The tenants have not, legally speaking, a *freehold* interest, but an interest nearly as good as freehold; for it has long been settled, that the *freehold* is generally in the lord, as it is in *common copyholds*. See *Stephenson v. Hill*, 3 Burr. 1278; 3 Bos. & P. 378; 1 B. & C.

them in Fleta.<sup>u</sup> Hence Fitzherbert observes,<sup>v</sup> that no lands are ancient demesne, but lands holden in socage, that is, not in *free* and *common* socage, but in this amphibious subordinate class of *villein* socage. And it is possible, that this species of socage tenure is founded upon predial services, or services of the plough; it may have given cause to imagine, that all socage tenures arose from the same original, for want of distinguishing, with Bracton, between free socage, or socage of frank tenure, and villein socage, or socage of ancient demesne.

And, 3. *Copyholders of base tenure*, are those who also hold their lands of a *manor*, which is ancient demesne, but merely at the lord's will, and cannot have either a writ of *right-close*, or *monstraverunt*, but must sue by plaint in the lord's court.<sup>w</sup> These tenants are probably those who, as Britton testifies,<sup>x</sup> continued for a long time pure and absolute villeins, dependant on the *will* of the lord; and those who have succeeded them in their tenures, now differ from *common* copyholders in only a few points.<sup>y</sup>

But the *first* and *second* kinds of these tenants differ from *common* copyholders, principally in the *privileges* before mentioned; as also they differ from freeholders by one especial mark and tincture of villenage, noted by Bracton, and remaining to this day, viz. that they cannot convey their lands from man to man by the general *common law* conveyances *alone*, of feoffment, and the rest; but must pass them by deed<sup>z</sup> and admittance, or by surrender to the lord or his steward, in the manner of *common* copyholds; yet with this distinction,<sup>a</sup> that in the admittance<sup>b</sup> or surrender of these lands in ancient demesne, it is not used to say, "to hold at the *will* of the lord" (except in copyholds of *base* tenure), in their copies;<sup>c</sup> but only, "to hold according to the *custom*<sup>d</sup> of the manor."

ham, customary estates, or free copyholds, held of the bishop as lord of the manor, are not uncommon.

<sup>u</sup> L. 1. c. 8.                      <sup>v</sup> N. B. 13.

<sup>w</sup> Fitzherbert, Nat. Brev. 12.

<sup>x</sup> C. 66.

<sup>y</sup> F. N. B. 228.

<sup>z</sup> By special *custom*, these lands may pass by surrender and admittance, or by surrender, or by deed and admittance, or by deed; but where they are transferred by deed, the conveyance must, in general, be enrolled in the manor court, where only the tenant is impleadable. Watkins on Copyholds, edit. Coventry, p. 60, vol. 1, note.

<sup>a</sup> Kitchen on Courts, 194.

<sup>b</sup> The admittance is *tenendum*, but not *ad voluntatem domini*. Hal. MS. Of alienation by special *custom*. See 2 Bl. Com. cap. 22.

<sup>c</sup> This term, which is now at this day called *copy tenants*, or *copyholders*, or *tenants by copy*, is but a new found term, for of ancient times, they were called *tenants in villenage*, or of *base tenure*. Fitz. N. B. 12. c.

<sup>d</sup> The form of the habendum and reddend-

Thus have we taken a compendious view of the principal and fundamental points of the doctrine of Tenures, both ancient and modern; in which we cannot but remark the mutual connexion and dependence that all of them have upon each other. And upon the whole it appears, that whatever changes and alterations these tenures have in process of time undergone, from the Saxon æra to the Restoration (12 Car. 2), all *lay* tenures are now in effect reduced to *two* species; *free* tenure in common socage, and *base* tenure by copy of court roll.<sup>e</sup>

I mentioned *lay* tenures only, because there is still behind another species of tenure, which is called—

*Spiritual Tenure*, from its services being entirely spiritual. This includes *two* sorts—1. Tenure in *Frankalmoin*; and 2. Tenure by *Divine Service*.

1. Tenure in *Frankalmoin*, in *liberâ elemosynâ*, or *free alms*, is that whereby a religious corporation, aggregate or sole, holdeth lands of the donor to them and their successors for ever.<sup>f</sup> The service which they were bound to render for these lands, was *not* certainly defined; but only in general to pray for the soul of the donor and his heirs, dead or alive, and, therefore, they did *no* fealty, (which is incident to all other services but this);<sup>g</sup> because this divine service was of a higher and more exalted nature.<sup>h</sup> This is the tenure, by which almost all the ancient monasteries and religious houses held their lands; and by which the parochial clergy, and very many ecclesiastical and eleemosynary foundations, hold them at this day,<sup>i</sup> the nature of the service being upon the reformation altered, and made conformable to the purer doctrines of the church of England. It was an old Saxon tenure, and continued under the Norman revolution, through the great respect that was shewn to religion and religious men in ancient times; which is also the reason, that tenants in *Frankalmoin* were discharged of all other services,

dum, in the surrender of customary or free copyholds, is as follows:—"To have to the said C. D., and his sequels in right, according to the *custom* of the Court, *rendering*, therefore, by the year, at the usual terms as before was wont to be rendered, and doing to the lord and the neighbours, the duties and services accustomed by pledges, and so forth."

<sup>e</sup> Copyholders, customary tenants, and tenants in ancient demesne, have now arrived at nearly an equality with freeholders; and among other liberties, the franchise of voting for members of parliament, has been extended to them by the Reform Act, 2 W. 4, c. 45.

<sup>f</sup> Litt. s. 133.

<sup>g</sup> *Ibid.* s. 131.

<sup>h</sup> So Lord Coke observes,—"it is also said in our books, *que frankalmoin est le plus haute service*." (Co. Litt. 95 b.) And Littleton reasons, "because that this divine service is better for them." Litt. s. 135.

<sup>i</sup> Bracton, l. 4, tr. 1, c. 28, s. 1.

except the *trinoda necessitas*, of repairing the highways, building castles, and repelling invasions,<sup>1</sup> just as the Druids, among the ancient Britons, had “*omnium rerum immunitatem*.”<sup>2</sup> And, even at present, this is a tenure of a nature very distinct from all others; being not in the least feudal, but merely *spiritual*. For if the service be neglected, the law gives no remedy by distress or otherwise, to the lord of whom the lands are holden; but merely a complaint to the ordinary or visitor, to correct it.<sup>3</sup>

Wherein it materially differs from what was called—

2. Tenure by *Divine Service*, in which the tenants were obliged to do some special *divine services* in *certain*, as to sing so many masses, to distribute such a sum in alms, and the like; which, being expressly defined and prescribed, could with no kind of propriety be called *free alms*,<sup>4</sup> especially as for this, if unperformed, the lord might distrain without any complaint to the visitor;<sup>5</sup> and in this tenure, it seems, that fealty was due.<sup>6</sup> All such donations are, indeed, now out of use; for, since the statute of *quin emptores*, 18 Edw. 1, none but the king can give lands to be holden by *spiritual tenure*.<sup>7</sup> So that I only mention *frankalmoign*, and tenure by *divine service*, because the former is excepted by name in the statute of Charles 2, and the latter is not affected by it, and therefore, they subsist in many instances at this day. Which is all that shall be remarked concerning them; herewith concluding our observations on the nature of tenures.

J. H. N.

## THE REPEAL OF THE PROFESSIONAL CERTIFICATE DUTY.

To the Right Honourable the Chancellor of the Exchequer.

Sir,

A VAST outcry has long been raised against the Malt and Window Taxes, and perhaps, if it were possible, they ought to be repealed; but allow me to call your attention to

a tax of a far more reprehensible nature, both in regard to its oppression and injustice. I allude to the annual duty of 12*l*. imposed upon each solicitor and other legal professional gentlemen, not barristers.

This tax was first created by the act of the 25 G. 3, c. 80. Its amount, I believe, barely exceeds 80,000*l*. per annum; but although so small in its aggregate, it is severely felt by many respectable individuals of small incomes, who can ill sustain so oppressive a burthen—an arbitrary personal tax in fact of 1*l*. per month.

Now, Sir, in what single respect, let me ask, does the fairness of this tax consist? Is it universal through all professions and trades? Is it common to all or even any government or other offices or appointments? Or does it fall upon all or any of those most capable of bearing it, and most of all proper to be charged with it, viz. persons of independent fortunes, and of no professions, trades, or employments whatever? It is not to be defended upon any principle of fair, liberal, or equitable taxation. It has from its commencement been borne with patience, but not without much general and individual dissatisfaction and vexation.

More need not at present, perhaps, be said upon this subject,—feeling that I may rest assured that if the modification or repeal of any tax whatever, is in the following session to come under your consideration, this will not at least escape your candid, impartial, and liberal attention.

I have the honour, to remain,

Sir,

Very respectfully,

Your obedient servant,

A SOLICITOR OF THE COURT OF CHANCERY.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### STATUTES OF MORTMAIN.—BEQUEST TOWARDS BUILDING ALMSHOUSES.

*A member of a charitable society offers to convey land for the purposes of the charity and lets the trustees into possession. Another member bequeaths money towards building almshouses for the objects of the society, and dies before the land is conveyed formally: Held, that the bequest fails as within the Mortmain Acts.*

In the year 1828, the butchers of London and its vicinity formed a society for the purpose of giving pensions and making other provisions for poor members of that trade. In

<sup>1</sup> Seld. Jan. 1. 42.

<sup>2</sup> Cæsar de Bell. Gall. l. 6, c. 13.

<sup>3</sup> Litt. s. 136.

<sup>4</sup> The old books divide *spiritual* tenure, into *free alms*, (which was free from any *certain*ty;) and *ulms*, because the tenants were bound to *certain* divine services. And the tenure in *alms*, or tenure by *divine service*, Britton (fo. 164.) calls tenure *en aumône*. Co. Litt. 97 a.

<sup>5</sup> Litt. s. 137.

<sup>6</sup> Litt. s. 137. Fealty was incident to every tenure, but *frank almoign*; and where the lord might destrein, there was fealty due. Co. Litt. 97 a.

<sup>7</sup> *Ibid*. s. 140.

the year following they extended their project to the building of almshouses for them, and a Mr. Knight, a member of the society, offered to convey to the society, for that purpose, a piece of land in Berkshire, and let the trustees into possession of it. A Mr. Groves, another member, by his will bequeathed a sum of 5000*l.* to the society, "towards building the almshouses," and died before the land was conveyed to the society. The executors, conceiving that the bequest was within the Mortmain Acts, refused, by desire of the next of kin, to pay the 5000*l.* The plaintiffs, as trustees of the charity, filed a bill against the executors and the testator's next of kin, praying that they may be declared entitled to the bequest. The *Vice Chancellor*, on the hearing before him, decided that the bequest failed. This was an appeal from his Honor's decision.

Sir William Horne and Mr. Walker, in support of the bequest.—The gift was "towards the building of almshouses" on land which was then in the possession of the society. The intention of the testator was not to lay out the money in the purchase of land, which was the thing prohibited by the Statute of Mortmain.<sup>a</sup>

The *Solicitor General*<sup>b</sup> and Mr. J. Russell, in support of the decree below.—Before the testator's death Mr. Knight had made an offer to the society of a piece of land in Farnham Royal, or of one hundred guineas for the charity. That offer was under consideration at the testator's death, at which time the society could not be said to have the land, although they have since taken a formal conveyance of it according to the statute, in order, it is presumed, to give validity to the gift. The society having no land to build on at the testator's death, this bequest must be construed as a direction to buy land for the purpose of building almshouses. Such a gift is prohibited by the Mortmain Acts, as was declared by numerous decisions.

Most of the cases cited on both sides are noticed in the following judgment:

The Lord Chancellor—after recapitulating the facts and arguments, and noticing that the land given by Mr. Knight was not conveyed until 1830—after the death of Mr. Groves—said, that he did not find in any of the Mortmain Acts any express provision against laying out money in building on land—whether the omission was designed or accidental was a matter of doubt at present—but the construction of the Courts on these acts was against such employment of money, some Judges thinking it impolitic to withdraw the money from traffic, while others—with whom his Lordship concurred—thought it more impolitic to take the land out of traffic; and in the last Mortmain Act (9 G. 2, c. 36) "to restrain the disposition of lands, whereby the same become unalienable," reciting *Magna Charta*, the objection evidently was against

bringing land into corporate perpetual ownership for charitable purposes. His Lordship took a view of the case of *The Attorney General v. Boules*,<sup>d</sup> and other decisions of Lord Hardwicke soon after the passing of that statute, and said that according to these cases he had no doubt that a bequest of money to a charitable institution to build, with no land to build on being then in their possession, was within the act. He would not go the length of Lord Northampton in *The Attorney General v. Tyndal*,<sup>e</sup> but looking to the latter cases in this Court, he observed that Lord Eldon, in stating *The Attorney General v. Parsons*,<sup>f</sup> says, "he had reason to know Lord Thurlow's opinion was, that if a testator directs a school to be built, and does not advert, by words in his will, to a purchase, that the land is to be acquired otherwise than by purchase, you ought to infer that he meant it to be acquired by purchase, and then it will not do;" that is, the gift fails unless the testator points to land already in mortmain. The next position his Lordship deduced from the cases was, that we have a right to look at all the circumstances of the bequest, and to judge from them whether it was made to build on land already in mortmain, or to lay out the money in land to be purchased. That was the principle of the decisions in the cases of *The Attorney General v. Hutchinson* and *Attorney General v. Parsons*, before referred to, in which last it was decided, that a bequest for rebuilding, repairing, altering, or adding to and improving almshouses, is valid to the extent of any application of the bequest upon the land already in mortmain, but not for the addition of other land. The proof must be clear that the fund was not intended to be applied to build on land to be purchased, and that proof lies on the party seeking to take the bequest out of the statute. Here the money was given to a charitable institution towards building almshouses, and must necessarily refer to the buying of land. The only argument to meet that construction is, that Mr. Knight agreed to give land. Suppose that land to be in the possession of the institution, there was nothing to shew that the institution was not to buy more land with this bequest: it was clear that the possession of some land did not bind the institution from buying more land. We have no right to read this bequest as if it was not towards buying land. Mr. Knight's land was not in the undisturbed possession of the institution. They were mere tenants at will, and Mr. Knight might dispossess them; and if he should, then this legacy should go to buy land. The *Vice Chancellor's* decision is right; but as the institution was justified under the circumstances to try to secure this bequest for the charity, and as the next of kin obtains what the testator never intended for him, let

<sup>a</sup> 9 G. 2, c. 36.

<sup>b</sup> Mr. Rolfe.

<sup>c</sup> Lord Brougham.

<sup>d</sup> 3 Atkyns, 806; 2 Ves. sen. 257, S. C.

<sup>e</sup> Amb. 614; 2 Eden, 207, S. C.

<sup>f</sup> 8 Ves. 186.

<sup>g</sup> Amb. 757.

the costs of the cause and of the appeal here be paid out of the fund, and the deposit be returned to the trustees, the appellants.

*Giblett v. Hodson*, at Westminster, M. T. 1834.

### Vice Chancellor's Court.

#### SOLICITOR'S BILL.—COSTS OF TAXATION.

*A solicitor's bill of costs, for payment of which he brought a suit against the client, and succeeded, is subsequently taxed and reduced by one-sixth part of the whole; held, that notwithstanding the Act, 2 G. 2, c. 23, the costs of taxation are to be paid by the client.*

The suit in this case was instituted by solicitors, for the purpose of obtaining the declaration of the Court, that the separate estate of their client, a married lady, living apart from her husband, was liable to the payment of their costs incurred in conducting her suits. Lord Chancellor Brougham, after hearing much argument, and taking time to consider the case, gave a very elaborate judgment, affirming the decree of the Vice Chancellor<sup>b</sup> in favor of the plaintiffs. Their bill of costs was, in pursuance of the decree, referred to the Master for taxation, and upon the taxation, more than one-sixth of the whole was taken off.

Sir Edward Sugden, having stated those facts, moved that the costs of the taxation of the plaintiff's bill of costs, be ordered to be paid out of the separate estate of the lady, as well as the bill taxed. Although the Act of Parliament<sup>c</sup> declared, that if the bill taxed be less by a sixth part than the bill delivered, the attorney or solicitor was to pay the costs of taxation; still there was a well recognised distinction, between the cases in which the bill of costs is taxed under the statute, before action brought on it, and when the taxation was subsequent to the action. In this case, the taxation was subsequent to the suit, and this Court would adopt and apply to this case the rule at law.

Mr. Girdlestone, submitted, that the distinction alluded to, did not apply to this case. The only rule for deciding the costs of taxing a solicitor's bill, was that laid down in the Act of Parliament. It was imperative on the solicitor to pay the costs of taxation when one-sixth part was taken off his bill, although if a less part was taken off, the Court had a discretion to charge the solicitor, in regard to the reasonableness or unreasonableness of his charges.

The Vice Chancellor, held, that the same rule was applicable in Courts of Equity, as at law. He thought the distinction was warranted by the cases, and made the order accord-

ingly on the lady's trustees, to pay the costs of taxation out of her separate estate.

*Murray v. Barloe*, at Westminster, M. T. 1834.

### King's Bench.

[Before the four Judges.]

#### PLEADING.—UNIFORMITY OF PROCESS ACT.—VARIANCE.

*It is irregular to declare "on promises" after process, in "trespass on the case."*

In this case, cause was shewn against a rule for setting aside a declaration, on the ground of variance from the process. It appeared, that the summons was in "trespass on the case," and the declaration "on promises." This, it was submitted, was not a fatal variance.

In support of the rule, it was submitted, that both on the principle and on the cases, the declaration was irregular by means of this variance.

*Per Curiam*.—There can be no doubt, that the variance is fatal.

Rule absolute.—*Scrivener v. Watley and another*, H. T. 1835. K. B. F. J.

### King's Bench Practice Court.

#### AWARD.—LACHES.—ARBITRATION.

*Although an award is made pursuant to an agreement, and not by a Judge's order, an application to set it aside must be made within the term after it has been made.*

This was an application to set aside an award under the following circumstances. An action had been commenced, and afterwards the parties agreed to refer, but without a Judge's order. The reference proceeded, and an award was made during the last Trinity vacation. The whole of Michaelmas term had been allowed to elapse without any application being made to set it aside. The agreement was made a rule of court, and now the present rule was applied for to set it aside.

*Patteson, J.*, after taking time to consider, was of opinion that the application was too late, and therefore refused the rule.

Rule refused.—*Rushworth v. Barrow*, H. T. 1835. K. B. P. C.

#### TESTE OF CERTIORARI.—RETURN TO WRIT.—AMENDMENT.

*Where by mistake a writ of certiorari has been tested in vacation, the Court will, under certain circumstances, allow the teste and subsequent proceedings to be amended.*

In this case, a motion was made to set right certain proceedings, which had been had upon a writ of certiorari, which had been issued under the following circumstances. A judgment had been obtained in an inferior jurisdiction;

<sup>a</sup> 8 L. O. 473.

<sup>b</sup> 4 Sim. 86.

<sup>c</sup> 2 G. 2, c. 23.

and for the purpose of removing it into the superior Court, a *certiorari* had been issued in the vacation, which was also tested in vacation. The judgment was accordingly returned, and that also was dated in vacation.

*Patteson, J.*, observed, that the *certiorari* ought only to issue in term time, and be tested in term time. The proceedings here were altogether wrong; if a new writ of *certiorari* were issued, a difficulty would arise, because there was no judgment now to be returned, it being already in Court. A rule to shew cause, however, might be taken for amending the teste of the writ of *certiorari*, and the subsequent proceedings; so that the plaintiff might avail himself of the judgment now in Court.

Rule *nisi* accordingly.—*Rowell v. Breedon*, H. T. 1835. K. B. P. C.

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COSTS.—TAXATION.—WITHDRAWING RECORD.—SITTINGS.

*A plaintiff is not liable to the costs of attending for the trial of a cause, until he has actually been guilty of a default.*

In this case, a rule was obtained for reviewing the Master's taxation, on the ground of his not allowing a sufficient amount of costs to the defendant. It appeared, that the cause was originally set down for the first sittings in last *Michaelmas* Term, but did not come on at them. Those sittings, however, lasted until the end of the day previous to the second sittings. On the morning of the first day of the second sittings, the plaintiff not having resealed his record, was compelled to withdraw it. The cause afterwards came on for trial, and the Master subsequently, on taxation, refused to allow the costs of the defendant at the first sittings. These, it was contended, he ought to have allowed, as it was contended to be the consequence of the plaintiff's neglect, that those costs had unnecessarily been incurred.

On shewing cause against this rule, it was submitted, that no default had existed on the part of the plaintiff, in not bringing the cause on for trial at the first sittings. He was prepared to try throughout those sittings, and it was not until the second sittings, when the record was withdrawn, that any default was made. To the costs, therefore, of the first sittings, the plaintiff could not be liable.

*Patteson, J.*, was of opinion, that no default having been committed until the second sittings, the first must be considered as out of the question; and, therefore, that the Master was quite right in his disallowing the costs of it.

Rule discharged.—*Welsh v. Fear*, H. T. 1835. K. B. P. C.

OUTLAWRY.—INSOLVENT DEBTOR.—VACATION.—CONDITIONAL ORDER.

*The Court will interfere summarily, to prevent an insolvent remaining for an unnecessary time, in consequence of an outlawry still unreversed.*

This was an application to obtain an order for the discharge of the defendant, under these circumstances. The defendant had been outlawed, and afterwards taken the benefit of the Insolvent Act. The Insolvent Court afterwards made an order for his discharge, conditional on his suffering a certain term of imprisonment. That discharge would be a ground for setting aside the outlawry. An outlawry, however, could only be set aside in term time; but the period of his imprisonment would expire on the 13th of March; yet term did not begin till the 15th of April. Unless, therefore, the Court interfered, by making a special order on the subject, the defendant must remain in prison during the period between the 13th of March and the 15th of April.

*Patteson, J.*, directed, that a rule should be drawn up for his discharge from the outlawry, if the defendant should remain in custody until the 13th of March.

Rule accordingly.—*Waters v. Johnson*, H. T. 1835. K. B. P. C.

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PENDENCY OF ACTIONS.—DISCONTINUANCE.—SECOND ACTION.

*It is not irregular for a plaintiff to issue several serviceable writs, without discontinuing the previous one for the same cause of action.*

In this case an application was made to set aside a writ, and discharge the defendant out of custody, on the ground of three serviceable writs having been sued out for the same cause, which the plaintiff had not discontinued previous to arresting the defendant. A rule *nisi* having been obtained for this purpose—

Cause was afterwards shewn, and it was then sworn on the part of the plaintiff, that the defendant had received notice not to appear to the previously issued writs. There was, however, no objection to a plaintiff suing out a bailable writ, before he discontinued an action commenced by serviceable process. The object of the rules of Court, with respect to discontinuing one action before a second was commenced, was merely to prevent a defendant being twice arrested for the same cause. Here no such evil could result, and therefore it was submitted, that the present rule had been improperly obtained.

*Littlehale, J.*, thought, that the proceedings of the plaintiff were quite regular, and therefore directed the rule to be discharged with costs.

Rule discharged, with costs.—*Chapman v. Vandeveld*, H. T. 1835. K. B. P. C.

**ATTORNEY.—CERTIFICATE.—ENTRY IN MASTER'S BOOK.**

*Where the Court will allow an attorney to have his certificate entered at the Master's office, although it has not been entered in due time.*

This was an application by an attorney, to be allowed to enter his certificate at the Master's office now, although more than a year had expired since it had been taken out. It appeared from his affidavit, on which the application was founded, that he had taken out his certificate regularly down to the present time. In the year before last, he had desired his clerk to enter his certificate regularly; but through negligence, he had omitted to enter it, pursuant to his master's directions. In the year subsequent to that, he had entered his certificate regularly. The object of the present motion, therefore, was, that the entry of the certificate for the year, during which it had been omitted, might now be made.

*Patteson, J.*, thought, that under the circumstances, the entry might now be made.

*Es parte Fry*, H. T. 1835. K. B. P. C.

**EJECTMENT.—SERVICE OF DECLARATION.—VENUE.**

*Where the venue in the margin of a declaration in ejectment is immaterial.*

This was a motion for judgment against the casual ejector. The venue stated in the margin of the declaration was "Gloucestershire," and that mentioned in the body was "Wilts."

*Patteson, J.*, was of opinion that the venue in the body, which was right, cured the defective statement in the margin.

Rule granted accordingly.—*Doe v. Roe*, H. T. 1835. K. B. P. C.

**BAIL.—ESTREATING RECOGNIZANCES.—PROCEEDING TO TRIAL.**

*If a defendant does not proceed to trial in due time, that is not a ground for estreating the bail's recognizances.*

This was an application to estreat the recognizances of the defendant's bail, on the ground of the defendant not having proceeded to trial pursuant to his notice for that purpose, and also as against the defendant for the costs of the day.

*Patteson, J.*, (after referring to the Master of the Crown Office) stated that there was no instance in which the fact of the defendant not having proceeded to trial pursuant to a notice given by him, was made the ground of applying to estreat the recognizances of his bail. The rule prayed for therefore could not be granted.

Rule refused.—*The King v. Wall*, H. T. 1835. K. B. P. C.

**ATTACHMENT.—NON-PAYMENT OF MONEY.—ATTORNEY.**

*Where an order for payment of money directs that it shall be paid to several persons, or to*

*their attorney, it does not appear to be necessary in order to obtain an attachment for non-payment thereof, to shew that neither they nor their attorney have received that sum.*

Motion for an attachment against a defendant for non-payment of a certain sum of money pursuant to a rule of court for that purpose. It appeared that the rule of court directed the payment of the money by the defendant to either of them, or the attorney of either of them. The affidavit on which the application was founded did shew that the money had not been paid to either of the two persons whose names were mentioned in the rule; but it did not shew that it had not been paid to the attorney of either of them. This it was contended was sufficient, and that it was rather for the other side to shew that a payment had been effected to the attorney of one or other of the persons mentioned in the rule, and by that means get rid of the attachment, than for those persons to go on and shew that the money had not been paid to either of the attorneys.

*Patteson, J.*, thought that perhaps the affidavit was sufficient, but it would be safer to have an affidavit by the attorney.

Rule refused.—*George v. King*, H. T. 1835. K. B. P. C.

**Common Pleas.**

**EJECTMENT.—SERVICE OF DECLARATION ON SON.—WIFE.**

*The statements of the wife cannot be used against the husband in order to make out complete service in ejectment.*

Motion for judgment against the casual ejector. The affidavit on which this motion was founded stated the service to have been on the son of the tenant in possession, and that afterwards, on applying to know if it had been received by the tenant, deponent was informed, by the wife of the tenant, that she had taken care he should be out of the way to prevent his being arrested, or in any other way annoyed.

*Per Curiam*.—The service is insufficient. You cannot make the wife a witness against her husband.

Rule refused.—*Doe d. Wilson v. Smith*, H. T. 1835. C. P.

\* It should seem, that Mr. Justice *Patteson* might in this case have at once refused the rule for an attachment. It would be quite contrary to the usual course in proceedings of this sort, if it were competent for a party to bring another into contempt, unless it was shewn clearly that the supposed offending party had disobeyed entirely the order of the Court. The usual mode in all criminal proceedings is, that the person who seeks to set the law in motion against another should be prepared with all his materials, in order to shew that the defendant is entirely wrong, and not throw it on him to prove that he is right.



**INTERPLEADER ACT.—SHERIFF'S EXPENSES.****—AGENCY.**

*Where a sheriff applies for relief under the Interpleader Act, and the parties constitute him their agent after the application has been made, he will be entitled to his expenses consequent on such agency.*

This was an application under the Interpleader Act, by a sheriff. It appeared that the sheriff had seized goods, on the 25th of February, on behalf of a judgment creditor, which were claimed by two persons named Firminger and Aylmore. On the 3d of May he applied for relief under the Interpleader Act, when an issue was directed to be tried between the plaintiff and the claimants. The plaintiff, however, afterwards finding that the real owners of the goods were the claimants, he abandoned all claim to them, and refused to try the issue. On the 23d of May the sheriff sold, and, in pursuance of a Judge's order made by consent, he satisfied the claim of Aylmore, and the remainder of the money, 11*l.* 6*s.*, the officer of the court retained, for the purpose of abiding the result of an application which he intended making to the Court for his expenses. This he accordingly did, and obtained a rule requiring Dabbs and Firminger to shew cause why they should not compensate him for his keeping possession from the 25th of February to the 23d of May, and the expenses of the sale.

*Per Curiam.*—We are of opinion that that part of the rule which relates to the sheriff's being in possession from the time of applying to the Court to the time of the sale, and also the part relating to the costs of the rule and of this application, should be absolute, and the plaintiff in this action to pay the costs. Firminger's goods having been wrongfully taken, he consequently had a right of action against the sheriff and the judgment creditor for the value of those goods. It is clear from the affidavit, that after the application the sheriff became the agent of the judgment creditor, whose agent he was also in the sale of the goods. The sheriff, therefore, must receive his expenses for remaining in possession from the 3d to the 23d of May, the expenses of the sale, and of this application, from Dabbs, the judgment creditor. Firminger must receive the 11*l.* 6*s.* in Court, and his costs of appearing here, from the sheriff, and must be repaid by Dabbs.

Rule accordingly.—*Dabbs v. Humphries*, H. T. 1835. C. P.

**JUDGMENT AGAINST THE CASUAL EJECTOR.—SERVICE OF DECLARATION.**

*It is not a sufficient service of a declaration in ejectment, to effect it on a sister of the tenant in possession.*

This was an application for leave to sign judgment against the casual ejector. The service was on the sister of the tenant in possession, accompanied with the usual explanations. The sister at the same time, undertook to de-

liver the declaration with the explanation given to the tenant. There was, however, no proof that the tenant had constituted the sister as her agent, or authorised her in any way to accept service for her sister.

The Court refused to allow judgment to be signed, or to grant a rule nisi for that purpose.

Rule refused.—*Doe d. Tibbs v. Roe*, H. T. 1835. C. P.

**SITTINGS IN CHANCERY,**

*After Hilary Term, 1835.*

**BEFORE THE LORD CHANCELLOR.**

Thursday	. Feb. 12	} Motions.
Friday	. . 13	
Saturday	. . 14	
Monday	. . 16	} The First Seal.
Tuesday	. . 17	
Wednesday	. . 18	} Re-hearings & Appeals.
Thursday	. . 19	
Friday	. . 20	} Adjourned Lunatic Petitions.
Saturday	. . 21	
Monday	. . 23	} He-hearings & Appeals.
Tuesday	. . 24	
Wednesday	. . 25	} The Second Seal.
Thursday	. . 26	
Friday	. . 27	} Re-hearings & Appeals.
Saturday	. . 28	
Monday	. March 2	
Tuesday	. . 3	} The Third Seal.
Wednesday	. . 4	
Thursday	. . 5	} Motions.
Friday	. . 6	
Saturday	. . 7	} Re-hearings & Appeals.
Monday	. . 9	
Tuesday	. . 10	} The Fourth Seal.
Wednesday	. . 11	
Thursday	. . 12	} Motions.
Friday	. . 13	
Saturday	. . 14	} Re-hearings & Appeals.
Monday	. . 16	
Tuesday	. . 17	} The Fifth Seal.
Wednesday	. . 18	
Thursday	. . 19	} Motions.
Friday	. . 20	
Saturday	. . 21	} Re-hearings & Appeals.
Monday	. . 23	
Tuesday	. . 24	} The Sixth Seal.
Wednesday	. . 25	
Thursday	. . 26	} Petitions.
Friday	. . 27	

Such days as his Lordship is engaged on appeals in the House of Lords are excepted.

The Court will adjourn on Thursday, April the 2d.

**BEFORE THE VICE CHANCELLOR.**

Monday . Feb. 16	The First Seal.
Tuesday . . . 17	Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Wednesday . . 18	
Thursday . . . 19	
Friday . . . . 20	
Saturday . . . 21	
Monday . . . . 23	The Second Seal.
Tuesday . . . . 24	
Wednesday . . 25	
Thursday . . . 26	
Friday . . . . 27	
Saturday . . . 28	Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Monday . March 2	
Tuesday . . . . 3	
Wednesday . . 4	
Thursday . . . 5	
Friday . . . . 6	The Third Seal.
Saturday . . . 7	
Monday . . . . 9	
Tuesday . . . 10	
Wednesday . . 11	
Thursday . . . 12	The Fourth Seal.
Friday . . . . 13	
Saturday . . . 14	
Monday . . . . 16	
Tuesday . . . 17	
Wednesday . . 18	The Fifth Seal.
Thursday . . . 19	
Friday . . . . 20	
Saturday . . . 21	
Monday . . . . 23	
Tuesday . . . 24	The Sixth Seal.
Wednesday . . 25	
Thursday . . . 26	
Friday . . . . 27	
Saturday . . . 28	

The Court will adjourn on Thursday, April the 2d.

**SITTINGS AT THE ROLLS,**  
*After Hilary Term, 1835.*

To Sit at the Rolls at Ten o'Clock.

Wednesday . Feb. 11	Pleas, Demurrers,
Thursday . . . 12	Causes, Further Di-
Friday . . . . 13	rections, and Excep-
Saturday . . . 14	tions.
Monday . . . . 16	Motions.
Tuesday . . . . 17	Pleas, Demurrers,
Wednesday . . 18	
Thursday . . . 19	
Friday . . . . 20	
Saturday . . . 21	
Monday . . . . 23	Motions.
Tuesday . . . 24	
Wednesday . . 25	
Thursday . . . 26	
Friday . . . . 27	
Saturday . . . 28	Pleas, Demurrers,
Monday . . . . 30	
Tuesday . . . 31	
Wednesday . . 32	
Thursday . . . 33	

Monday . March 2	Petitions in the General Paper.
Tuesday . . . 3	Pleas, Demurrers, Causes, Further Di- rections, and Excep- tions.
Wednesday . . 4	
Thursday . . . 5	
Friday . . . . 6	
Saturday . . . 7	
Monday . . . . 9	Motions.
Tuesday . . . 10	
Wednesday . . 11	
Thursday . . . 12	
Friday . . . . 13	
Saturday . . . 14	Pleas, Demurrers, Causes, Further Di- rections, and Excep- tions.
Monday . . . . 16	
Tuesday . . . 17	
Wednesday . . 18	
Thursday . . . 19	
Friday . . . . 20	Motions.
Saturday . . . 21	
Monday . . . . 23	
Tuesday . . . 24	
Wednesday . . 25	
Thursday . . . 26	Petitions in the General Paper.
Friday . . . . 27	Short Causes.

Causes, Further Directions, and Petitions by  
Consent, every Friday, at the Sitting of the  
Court.

**EXCHEQUER EQUITY SITTINGS,**

*After Hilary Term, 1835.*

Monday . Feb. 9	Lord Abinger.
Tuesday . . . 10	
Wednesday . . 11	
Thursday . . . 12	
Friday . . . . 13	
Saturday . . . 14	Mr. Baron Alderson will hear Causes.
Monday . . . . 16	
Tuesday . . . 17	
Wednesday . . 18	
Thursday . . . 19	
Friday . . . . 20	Lord Abinger.
Saturday . . . 21	
Monday . . . . 23	
Tuesday . . . 24	
Wednesday . . 25	

Lord Abinger will also sit one or two days  
before he goes the circuit.

## COMMON PLEAS SITTINGS.

*After Hilary Term, 1835.*

MIDDLESEX.		LONDON.	
<i>Common Juries.</i>		<i>Common Juries.</i>	
Monday . . . Feb. 2		Tuesday . . . Feb. 3	
Wednesday . . . 4		Thursday . . . 12	
Thursday . . . 5		(the Adjournment day)	
Friday . . . 6			
<i>Special Juries.</i>		The days for Special	
Saturday . . . Feb. 7		Juries are not yet fixed.	
Monday . . . 9			
Tuesday . . . 10			
Wednesday . . . 11			

## ANSWERS TO QUERIES.

*Common Law.*

## ACCOMMODATION BILL. P. 240.

In *Seddons v. Stratford*, Peake's N. P. C. 215, it was held, *per Kenyon*, C. J. (I quote from Selwyn's N. P. tit. Bills of Exchange), that "a person who, at the request of the holder of a note, has put his name upon it, and in consequence thereof has been obliged to pay the contents to a *bond fide* holder, may recover the money paid from any person whose name is on the note, although he *knew* that the note was originally given for an illegal consideration, viz. for premiums for the insurance of tickets in the lottery." Now, pursuing the analogy of the above case, I should imagine the assignees of the acceptor for accommodation, *A.*, mentioned by "A Subscriber," could prove for the amount of dividends paid under *B.*'s estate. Indeed the law would be more favorable to *A.*'s interests even, than to the indorser in the case above cited, as the bill has not been grounded on an illegal consideration.

J. O.

## QUERIES.

*Law of Property and Conveyancing.*

## DEVISE.

*F. R.* by her will, duly attested to pass real estates of inheritance, devised as follows: "I give, devise, and bequeath unto *S. R.* all that my messuage, tenement, or dwelling-house and premises, situate, &c., with their and every of their appurtenances, to hold to her and the heirs of her body, lawfully begotten; and in default of the heirs of the body of the said *S. R.* living at the time of her decease, then it is my will, and I do subject and make chargeable the said messuage, &c. with the payment of 50*l.* to *J. S.* and *F. S.*, to be paid to each of them the said *J. S.* and *F. S.* within six months after the decease of the said *S. R.*; and subject and chargeable with such payment of 50*l.* a-piece

to the said *J. S.* and *F. S.*, which I give and bequeath to each of them in the event of the said *S. R.* dying without issue of her body, lawfully to be begotten, living at the time of her decease, I give and devise the said messuage, &c. unto and to the use of the heirs and assigns of the said *S. R.* for ever." What estate does the said *S. R.* take in the premises (which are freehold) under the above devise? Does the heir at law of *S. R.* take any, and what estate therein?

G. R. F.

## TRUSTEE.—RECEIPT STAMP.

The Bank of England and E. I. Company each contract with government for receipt stamps, and pay the dividends half-yearly on plain warrants, taking receipts in their books, &c. Are trustees and guardians entitled to pay over such dividends, when received, without a memorandum or receipt on a stamp, *ad valorem*, or will an acknowledgment by way of letter answer the purpose as well, the duty having once been paid on the same sum?

A TRUSTEE.

## AD VALOREM AND DEED STAMP.

2900*l.* in money and some leasehold estates are assigned to trustees under a marriage settlement. The *ad valorem* duty payable for the 2900*l.* is 3*l.* Is there an additional 35*s.* deed stamp necessary in respect of the leaseholds? Or does the 3*l.* stamp embrace the whole?

J. W.

## THE EDITOR'S LETTER BOX.

The letters of S. W. S.; Homo; T. B.; H.; and Lex, jun., are under consideration.

The suggestion regarding the Quarterly Digest, shall be attended to.

A correspondent informs us, that in our report of the rule "*Finley v. Rallett*," in the Exchequer, as to the attachment being set aside, the plaintiff not having lost a trial, on payment of costs, was quite correct, but there were no further terms imposed, *as to the attachment remaining as a security*. If so, there would have been no relief to the sheriff.

The Queries and Answers of M. N. R.; G. R. F.; T. P.; J. S.; I. O.; Adviser; E.; Spes; and A Country Subscriber, have been received.

The additional names of Perpetual Commissioners arrived too late for the last Supplement.

The further communications as to the Legal Almanack shall receive our best attention.

*Errata*.—P. 273, second column, line 10, for *third* read *three*, and for *volume* read *volumes*. P. 276, first column, line 43, for *Aderson* read *Adolphus*. P. 276, second column, line 19, for *positiōni* read *positivi*.

*Inns of Court*.—We understand that an alteration has been made which removes the doubt adverted to in the last Number, regarding the new regulations.

# The Legal Observer.

Vol. IX. SATURDAY, FEBRUARY 14, 1835. No. CCLIII.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PROGRESS OF CHURCH REFORM.

WE have always considered Church Reform within our province as lawyers, and from the earliest commencement of this work, have endeavoured to prove its necessity and further its progress; and in pursuing our inquiries on this subject, have in fact gone greater lengths than some of our friends have approved. We are happy, however, that the principles on the subject which we have ever enforced, are now in a train of being acted on by all parties in the state.

We shall here briefly recapitulate the alterations for which we have always contended.\*

In our second volume, pp. 161, 162, we find that we said, "we are not for despoiling the church of her possessions, but we certainly are of opinion that the mode of levying and distributing her revenues, is almost the worst that could possibly be devised: that it is alike indefensible in theory as in practice; and that a material alteration in these respects must be made." "That the legislature may, in conformity to the original institution of tithes and approved precedents, proceed to the remodelling of the present system." And in the same volume, p. 243, we said,

"We are in fact well satisfied that a greater equalisation of the property of the church among its present holders is absolutely necessary. Let the strength of the church not consist in the power, wealth, and influence of her clergy, but in the veneration and numbers of her disciples. This can be promoted in no better way than by remedying the present oppressive and inefficient mode of collecting tithes, and by distributing her revenues more equally among the laborious teachers of her faith. The clergy as a body must be rendered more respectable; the means of the parish priest must be increased: it is here that reform is necessary."

In our third volume, p. 316, in allusion to the dreadful tithe massacres which had then recently taken place in Ireland, we said, that "the system is to blame; and we have no hesitation in saying, that unless we are prepared to remedy it in time, we must expect shortly to see Kent and Sussex in the same state as Carlow or Tipperary."

In our fifth volume, p. 294, we stated our approval of the bill introduced by the then existing Government with respect to the Church in Ireland, observing that "as in nine Irish counties the people positively refused to pay tithes, and that when goods were seized in default of payment, they could not be sold, as no purchaser could be found for them, it must be admitted that some strong and effectual remedy was necessary."

In our seventh volume, p. 308, in allusion to the progress of Church Reform in Ireland, we say, "A series of acts have been passed with respect to that country, which put an end to some of the formerly received notions with respect to church

\* For the various bills which have been lately brought in relating to the subject of Church Reform, see 2 L. O. 148—150, 169—171; and articles on the progress of Church Reform, 2 L. O. 241; 3 L. O. 317; 4 L. O. 321; 5 L. O. 53, 294; 7 L. O. 308, 529; 8 L. O. 145.

property. By the 2 & 3 W. 4, c. 119, a permanent composition for tithes was established in Ireland; and by the important act 3 & 4 W. 4, c. 37, the most extensive alterations were made. Commissioners are appointed to make a valuation of the livings and church preferments; the revenues of bishopricks are to be reduced and consolidated; benefices are to be augmented; glebes to be divided: in short, church property is dealt with by the state as completely under its subjection. The previous measures therefore, although they relate only to Ireland, are of the utmost importance to Church Reform in England, considering that the property of both establishments is held by the same tenure."

We have been at the pains to state the opinions which we have always maintained on this subject, because we believe that we hold them in common with the great majority of our professional brethren; and are desirous of shewing, that as lawyers we have been the steady and constant friends of a Reform in the Church, from the commencement of our labours.

We have now to mention the important step which has been made in the enquiry into this subject by the issuing of the late Commission.

The King has directed letters patent to be passed under the Great Seal, appointing the Archbishop of Canterbury, the Lord Chancellor, the Archbishop of York, the Earl of Harrowby, the Bishop of London, the Bishop of Lincoln, the Bishop of Gloucester, Sir Robert Peel, Mr. Goulburn, Mr. Wyne, Mr. Henry Hobhouse, and Sir Herbert Jenner, Commissioners "for considering the state of the several dioceses in England and Wales, with reference to the amount of their revenues, to the more equal distribution of episcopal duties, and to the prevention of the necessity of attaching by commendam to bishopricks benefices with cure of souls; also for considering the state of the several cathedral and collegiate churches within the same, with a view to the suggestion of such measures as may render them most conducive to the efficiency of the established church, and for devising the best mode of providing for the cure of souls, with special reference to the residence of the clergy on their respective benefices."

Under this Commission we hope to obtain, whoever may be in power, an equalisation of the revenues and duties of the bishops, and—what will follow—the aboli-

tion of the practice of attaching by commendam benefices to bishopricks; an alteration in the disposition of cathedral property; and, what is even still more important, the residence of the clergy on their benefices.

We shall watch with great interest the further progress of Church Reform.

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## DEVISE SUBJECT TO A CHARGE FOR A CHARITY.

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### WHO IS ENTITLED TO SUCH CHARGE?

As to this question, the heir at law being the favourite both in courts of law and of equity, I shall first lay his case down for those who undertake to advocate his cause.

First then stands the case of *Arnold v. Chapman*, 1 Ves. 108, where the testator gave a copyhold estate to Chapman, he causing to be paid to his executors the sum of 1000*l.* and after payment of debts and legacies, the residue of all his estate, freehold, leasehold, copyhold, plate, rings, stock, &c. to the governors of the Foundling Hospital. On a bill filed by the executors for the 1000*l.* Sir T. *Sewell* held this to amount to a charge of the estate in the devisee's hands, and a trust for the heir at law; Sir *John Leach* considered himself bound by this case in *The Attorney General v. Henchman*, 2 S. & S. 498, and decided against the devisee taking the benefit of the charge. This case was the same as the last.

Again, in *Craven v. Hallam*, Amb. 643, testator gave his house to his trustees and executors in fee, but subject to several annual payments to the amount of 10*l.*, in trust along with his other property, to sell, and the money therefrom, along with the residue of his personal estate, to be applied, 1st, in payment of debts; 2nd, in payment of certain legacies which he thereby bequeathed; and lastly, the residue to be divided among certain parties; and he then declared the trust as to the 10*l.* charge in favor of certain charities. Lord *Camden* decided in favour of the heir, remarking, "It is material that the residuary legatees are not so of the land itself, but of the money after the land is sold."

These are the cases usually quoted under this particular head, in favour of the heir at law. The devisee has also some very strong cases in his favour. First then, in *Jackson v. Hurlock*, Amb. 487, testator devised to *S. M.* and her heirs, certain estates, subject to and charged with the payment of any sum not exceeding 10,000*l.* to such persons as he by letter, &c. to be left with her should appoint, not doubting her honor in performing his will; and subsequently by letter he requested certain sums to be raised by mortgage to pay certain legacies, among which were some for charities to the amount of 6,000*l.* Lord *Northington*: "The estate was devised to *S. M.*,

charged with payment of the legacies; and as they cannot take place, she is entitled to the estate discharged from them. This differs from the case of a devise in trust. I am very clear that the void legacies sink into the estate for the benefit of the devisee." In *Durour v. Motteux*, 1 Ves. 320. S. C. in n. 1 S. and S. 292, testator directs his real estate to be sold along with his leaseholds, monies, securities, &c. enumerating them, and after payment of all debts and legacies, to place out the residue of his estate in trust for certain parties; he then enumerates the legacies, among which was one of 1,200*l.* for a charity; Lord *Hardwicke* considered this legacy sunk in favour of the party taking the residue. Two cases are reported in favour of the devisee, of land subject to a charge, in 1 B. C. C. 61, and n., before Lord *Aspley*, *Barrington v. Hereford*, and *Wright v. Row*; the report being however very slight, I shall not notice them further. The next case is that of *Baker v. Hall*, 12 Ves. 497, before Sir *W. Grant*. There testator gave an annuity of 35*l.* a year to the clergyman of the parish, for the benefit of certain parish boys, (admitted to be void as a charitable use) to be issuing out of his mansion-house; and subject thereto, he gave his mansion to trustees in trust for one for life, remainder over, and gave the residue of his estates real and personal to the same trustees in trust for other parties. The question was, whether the annuity given to the charity went to the residuary devisees, or to the specific devisees. Sir *W. Grant* decided that it should sink for the benefit of the specific devisees, as part of the produce of the premises devised to them.

The next case is that of *Poor v. Miall*, 6 Mad. 32; and there testator gave certain leaseholds to a party on condition of his assigning a part to a charity. Sir *John Leach*: "This is an absolute gift upon an illegal condition to assign part, and the same as to pay a sum of money to a charity; in each case it is clear the legatee would have retained the whole leasehold property without payment of the sum of money, and therefore he must return the whole without the assignment of a part. There is yet one more decision of Sir *John Leach's*, in 1831, not yet reported by name, *Ray v. Jackson*, in which he decided in favour of the devisee taking the estate subjected to the charge. These are the cases usually cited in favour of the devisee; and I shall now proceed to notice some observations that have been made upon the doctrine and cases

1st, then, with respect to the case of *Jackson v. Hurlock*: it is said that Lord *Northington* decided the point hastily, and that in fact he had forgotten it until reminded by counsel, and that he then gave his judgment as above. It may however be observed, that this point was one of four points (being the fourth) discussed in that case, and that after the argument Lord *Northington* expressed himself of opinion with the plaintiff's counsel, on the 1st, 2nd, and 4th points, but declared his intention of considering further the 3rd point; and at a future

day, in speaking of this point, he did not again notice the 4th point until called upon, but having previously expressed an opinion on it, there was no occasion to repeat it. That the case is not ill decided, appears clearly from the opinions of both Lord *Redesdale* and Lord *Eldon*, in the 3rd vol. of Dow's Reports in Parliament, where, in p. 208 Lord *Redesdale*, after stating the case as above, states as to the execution of the power in favour of the charity: "This was void, and Lord *Northington* decided that the money went for the benefit of the devisee: but there the whole interest had been previously given to the devisee." He then goes on to shew the distinction between that case and *Grosvenor v. Hallam*, in which the charge was severed from the devisee and therefore went to the heir: and again p. 214, we find the following words of Lord *Eldon* on the case of *Jackson v. Hurlock*: "It was argued there that the heir at law ought to have this sum, as the estate was given to the devisee, subject to the payment: but the Court said, and rightly said, 'No!' The testator gave the devisee the whole interest in the land, reserving only a power of appointment, and if he abstained from appointing, or made an appointment which was void, he did not diminish the whole interest which was given to the devisee, and the heir was altogether disinherited. That points to the very distinction noticed by Lord *Cumden*, in *Grosvenor v. Hallam*, where the estate was given to the devisee, subject to certain rent charges which he created by his will, severing the rent charge from the devise, and thereby manifesting an intention that it should not go to the devisee; and the uses being void, the rent charges went to the heir at law. That was Lord *Northington's* decision; and the decision in *Barrington v. Hereford* proceeded on the same principle." These opinions, given in the House of Lords, may, I think, be allowed to set at rest the doubts on the case of *Jackson v. Hurlock*. As regards *Baker v. Hall*, it is to be observed that no counsel appeared for the heir at law; but in opposition to that it may be said, a learned and first-rate judge, (Sir *W. Grant*) presided, and would no doubt have ordered a further argument in presence of the heir if he had entertained any doubts. The case of *The Attorney General v. Henchman* is decidedly opposed to the two later cases, *Poor v. Miall* and *Ray v. Jackson*; and these cases were all decided by Sir *John Leach*.

I shall conclude my remarks on this subject with some few remarks made by Lords *Eldon* and *Redesdale* in the case of *Tregouwell v. Sydenham*, 3 Dow. 194, from which some test may possibly appear, whereby these opposite cases may in some degree be reconciled. Lord *Redesdale*, p. 206, "I take it to be perfectly clear, that where what is devised by will would otherwise descend to the heir, if not given to some devisee, goes to the heir at law; and that what it is impossible for the devisee to take belongs to the heir; and the question always is, where a purpose pointed out by the testator fails, whether the interest is expressly, or by necessary implication, given to some

devisee; if not, the heir must take." Again, p. 208; here the interest in the term was severed from the devise, the devisee not being to take till after the 20,000*l.* was raised, and therefore it must go to the heir till then. That is conformable to the decisions in the other cases, where the Courts have constantly held, that when a disposition cannot take effect, and there are neither *express words* nor necessary implication to show the testator's intention that the interest should go to a devisee, there the heir must take." Lord *Eldon*, p. 209. "Where land, or interest in land, such as would descend to the heir at law, is undisputed by the will, the heir at law shall have the benefit of all that is undisposed of: and if the testator has disposed of the legal interest, but not the beneficial, then the heir at law shall take by a resulting trust all the beneficial interest which is undisposed of. I do not say this is universally true, because particular circumstances in certain cases may make a distinction; but that is the general rule, and it amounts to this: that *pro tanto* the heir is not disinherited. It follows then, that when a devise fails the interest goes to the heir at law, unless there appears in the will *express words* or necessary implication to the contrary." And again, p. 210: "the general principle is, that an heir can only be disinherited by express words or necessary implication; and if there is a doubt whether it is intended for the devisee or heir; or in case what is given by the will to another should not have effect, then it goes to the heir. But if a gift over is clearly expressed, or necessarily implied, then it goes as the testator intended it should go. As for instance, land is devised to *A.* charged with a legacy to *B.* provided *B.* attain the age of 21. There the devise is absolute as to *A.* unless *B.* attains 21; if he does, then he is to have the legacy: but his attaining 21 is a condition upon which alone he is to have it; and if he does not attain that age, then the will is to be read as if no such legacy had been given, and the heir at law does not come in because the whole is absolutely given to the devisee; but a gift which fails must be clearly intended, upon the failure of the condition, to be for the benefit of the devisee, otherwise he cannot take advantage of that failure, as he, being devisee, can only take what is given him by the will." And again, p. 213: "as to the charity cases, where the gifts rendered void by the statute did not go to the heir, they all seem to have been decided upon one or another of these grounds: that the heir at law was completely disinherited, or that his claim was barred under an intention of the testator's, express or clearly implied. The case of *Jackson v. Hurlock* appears to have been decided on the first of these principles."

With these remarks, I shall leave the parties who feel inclined to discuss the matter, their choice of sides.

T. O. B.

## ON THE RIGHTS OF SCHOOLMASTERS.

When a child at school for whom payment had been made quarterly, was sent home on account of illness four days after the commencement of a quarter, did not return, it was held that the master was entitled to a whole quarter's schooling, although there was no express contract for a quarter's notice or a quarter's pay; and although the school was a day school, in which the child was the only boarder. *Collins v. Price*, 5 Bing. 132. If a schoolmaster seeks to recover beyond the actual period of schooling, on the ground of removal without notice, the identical copy of the prospectus delivered to the defendant must be produced stamped. *Williams v. Houghton*, 2 Stark. 292. A very late case on this subject has been reported, which is of some interest.

Trespass for assault and false imprisonment. Plea, the general issue. At the trial at the Middlesex sittings in Easter term, before *Gurney, B.*, the following appeared to be the facts of the case:—The plaintiff, who sued by his next friend, was an infant about ten years old. He was placed by his mother, who was a widow, at a school kept by the defendant at Stockwell. The terms of the defendant's school were 20 guineas a year, payable quarterly. The first quarter, which became due on the 29th September, 1833, was duly paid. On the 24th December in the same year, the plaintiff's mother went to the school and asked the defendant to permit the plaintiff to go home with her for a few days. The defendant refused, and would not permit the mother to see her son, and told the mother that he would not allow him to go home, unless the quarter ending on the 25th December was paid. The mother remonstrated, and said she would pay the quarter's schooling in a short time, but it was not due until the next day. A few days afterwards, the mother went again to the defendant at his school, and demanded from him to see her son, and be allowed to take him home with her. The defendant refused. On the 31st of December, the mother went again with a friend, and made the same demand, but the defendant refused to let her see the plaintiff, or to allow her to take him home, and then he claimed another quarter's schooling, as a few days of the quarter after the 25th of December had then elapsed, and he insisted on keeping the plaintiff until that amount also should be paid. A formal demand was afterwards made, and on a writ of *habeas corpus* being sued out, the plaintiff was sent home, seventeen days having elapsed after the first demand by his mother. No proof was given that the plaintiff knew of the denial to his mother, nor was there any evidence of any actual restraint upon him. Upon these facts the learned Baron was of opinion, that there was no evidence of an imprisonment

to go to the jury, and he consulted the plaintiff. On a motion for a new trial, *Bolland, B.* said, this was an action of trespass for assault and false imprisonment, brought by an infant by his next friend. The facts of the case were these: the plaintiff had been placed by his mother at the school kept by the defendant, and it appeared that she had applied to take him away. The schoolmaster very improperly refused to give him up to his mother, unless she paid an amount which he claimed to be due. The question is, whether it appears upon the judge's notes that there was any evidence of a trespass to go to the jury? I am of opinion that there was not, and, consequently, that this rule must be discharged. It has been argued on the part of the plaintiff, that the misconduct of the defendant amounted to a false imprisonment. I cannot find any thing upon the notes of the learned Judge which shows that the plaintiff was at all cognizant of any restraint. There are many cases which shew that it is not at all necessary, to constitute an imprisonment, that the land should be laid upon the person; but in no case has any conduct been held to amount to an imprisonment, in the absence of the party supposed to be imprisoned. An officer may make an arrest without laying his hand on the party arrested; but in the present case, as far as we know, the boy may have been willing to stay; he does not appear to have been cognizant of any restraint, and there was no evidence of any act whatsoever done by the defendant in his presence. I think that we cannot construe the refusal to the mother in the boy's absence and without his being cognizant of any restraint, to be an imprisonment of him against his will; and, therefore, I am of opinion that the rule must be discharged.

The Lord Chief Baron and other Barons concurred.

*Herring v. Boyle*, 1 C. M. and R. 377.

## DEFENCE OF COUNTRY COMMISSIONERS IN BANKRUPTCY.

To the Editor of the *Legal Observer*.

Sir,

In Number 245 of the *Legal Observer*, page 185, under pretence of impugning the system of the recent arrangement of Country Commissioners in Bankruptcy, so direct a charge is attempted to be made against a particular List, of which the writer of this has the honour to be one, that I consider it due to the public and those associated with me, as well as to my own character, to take some notice of it.

After stating, that "a solicitor at Huddersfield issued a fiat against a trader at Penistone, &c." and "that the fiat was of necessity directed to the Sheffield Commissioners," your correspondent says, "the solicitor had to send a clerk near thirty miles, at a loss of two days in time, besides travelling expences, to arrange the opening of the fiat which the Commissioners fixed at Penistone."

The fact is, no clerk was sent a single mile even, but conveyance of letters by post was resorted to. The solicitor had much difficulty in getting at his facts as to necessary evidence. The fiat was opened near Penistone, which place was fixed by the solicitor himself as being the residence of the bankrupt and witnesses; and on the parties arriving at Penistone they certainly had five miles further to travel, but not within six miles of Sheffield, as asserted by the writer of your extract, but twice that distance. The next charge against us is, a waste of time and of the funds of the estate by spending "two days over what might have been done in half an hour at Huddersfield." We began the business about half-past twelve at noon, had long *ex parte* examinations of witnesses, particularly as to the act of bankruptcy, when after trying one witness till past ten at night, we found unless he could be compelled to give evidence of the existence of a deed, this fiat could not be established. His detention under the fear of commitment, and our remaining up all night, produced this deed by two the following morning; a messenger being sent for, and discovering that which the witness set out by attempting to swear was burnt.

The next charge is, the fixing all subsequent meetings at Sheffield, and thus causing extra expence to the estate of near 100*l*. By reason of our meeting near Penistone, I had to travel fifty miles; at which I did not complain, though Barnsley, the place first fixed on, is only fourteen miles from my residence.

Your correspondent knows as well as I do, that creditors in the country generally content themselves with sending affidavits by some neighbour; and it rarely happens that many attend the meetings even when they reside near the place, if at such a distance that their affidavit will be received. Now as to the grave charge of expence.—Under the old system, where only one Quorum Commissioner was called in (and to accomplish that the country solicitor frequently named in his fiat a barrister residing ninety miles from the place where the fiat was to be opened) the taxed bill varied from eighty to one hundred pounds, up to the choice of assignees. I know very little of other lists; but in the one attacked in your number I can tell you that in ordinary cases, with two Quorum Commissioners, the amount of the taxed bill varies from fifty to seventy pounds, which latter sum with all this extra expence of journeys (which five pounds or thereabouts covered), adjournments, and expences of clerks from Huddersfield to Penistone and Huddersfield to Sheffield, was, I believe, the amount of the taxed bill in the case quoted by your correspondent and alluded to in these sarcastic and backbited terms: "Is not this cheap law and justice at a man's door with a vengeance!"

So much for this case. Let us now ask if any advantage really be derived from this new system or not? The fact of reduced expenditure speaks for itself. Another argument in favour of it is the independence of the Commissioners, and that by having the same body



of men you have a chance of more uniform practice and decision.

When the solicitor appointed his own Commissioners, it frequently happened that after the final examination of the bankrupt no more was heard of the proceedings, because the bankrupt having obtained his certificate, the solicitor had no further inducement to call the creditors together; and within my knowledge are cases where funds have remained years undisposed of, because the Commissioners not liking to interfere with their then patron the solicitor, neglect to compel the division of those funds.

Then as to the opening of flats at a distance from the body of creditors. No general rule will meet all cases. Therefore, where it appears a certain portion of creditors reside at a place distant from the abode of the bankrupt, the fiat is now ordered to be directed to the list nearest the residence of such creditors. No system can boast of perfection; but I must say, that although the old one was more lucrative to the profession generally (and that is really why all this fault is found with it by your correspondent), creditors in general throughout the country see that, by the independence of the Commissioners, their real interests are not injured, but very decidedly and essentially promoted.

As you have allowed your publication to become the vehicle of attack, I trust you will permit it to be the instrument of defence to the Sheffield List of Commissioners.

I am, Sir,  
Your obedient Servant,  
A COMMISSIONER.

Sheffield, February 2, 1835.

## SELECTIONS FROM CORRESPONDENCE. No. XCII.

THE SIX CLERKS' OFFICE.

To the Editor of the Legal Observer.

Sir,

As a member of the profession to which your correspondent "Sufferer" belongs, although moving in a lower sphere, I feel that in justice to the parties accused (*i. e.* the agent or writing clerk of the clerk in court to whom he alludes), the blame should be cast upon the right shoulders.

I may premise to you, that I am neither directly nor indirectly connected with the Six Clerks' Office; that I know neither party; and that I desire as ardently as any of your readers to see a reformation in that office: but in this particular case, I think there is really no cause for censure.

On your correspondent's own shewing, publication was to pass on the first seal before the then following Michaelmas term; and not until the day of its passing does he take any step towards enlarging; and what was still more singular, his clerk in court was not apprised

of the order until the 3d of November, when, as might have reasonably been expected, the depositions had been seen.

It looks, I confess, very much like presumption in me to point out to you (who are so much better versed in these matters than I am), that if the defendant was entitled to his order upon an *ex parte* application, it could have been made equally well by petition at the Rolls, a few days earlier than the 31st of October, instead of waiting until the last day; in which case he might have had his order drawn up and served before publication had passed. But if for some cause, best known to himself, he determined to wait until the first seal, I think every solicitor, and every clerk who knows any thing of practice is aware, that it is the invariable course, where time is an object, immediately to inform your own clerk in court, and give a note to his opponent's, acquainting him that the order has been obtained, and is in course of being drawn up.

I therefore submit to your better judgment, that as "Sufferer" thought proper to travel out of the usual course, first, by delaying to enlarge, and secondly, by not giving notice of the order, the blame properly attaches to himself; and that in this case the Six Clerks' Office must be exonerated. H.

### COURT FEES.

Mr. Editor,

As a constant subscriber to your invaluable work, I should feel particularly obliged if any of your readers can answer the following inquiry.

In what minute proportions is the sum of 3*l.* 18*s.*, which is demanded and taken for Court fees in the Court of Exchequer, upon the trial of a cause, divided and to whom such proportions are paid; and how they have been sanctioned by each Judge for so long a period?

A client of mine having paid these fees in three actions, upon which defendants have gone to gaol, it has occurred to him to present a petition to both Houses of Parliament, to inquire into the matter; but wishes much for the information above asked.

LEX, JUN.

## DOUBTS ON THE NEW STATUTES.

### EXCHANGE OF COMMON FIELD LANDS.

Sir,

In accordance with the intention expressed a few weeks ago, I venture to trouble you with some additional comments on the recent act for facilitating the exchange of common field lands.

The first section empowers all persons entitled in fee simple, and for any estates not being less than an estate for years, of which 100 years shall be then unexpired, and for the guardians, &c. of such persons, being infants or under any other disability, with such con-

sent as thereafter mentioned, to make exchanges of their common field land; and the fourth section enacts, that whenever an exchange shall be made by any person having a less estate than a fee simple (which of course includes a tenant in tail in possession), or by any person under any disability (who of course may be a tenant in fee) the consent of "the person to whom the next immediate vested estate of freehold in remainder or reversion shall have been limited," shall be obtained.

Now I should like to hear some reason why a tenant in tail in possession, *sui juris*, should be obliged to obtain the consent of the person entitled in remainder or reversion, seeing that he can at any time bar the remainder, and by making himself tenant in fee simple, relieve himself from the obligation of obtaining the consent of any one. And I should like to know who is to consent in the case of a tenant in fee, not *sui juris*? or, in other words, who is the person entitled to the next vested estate of freehold in remainder after an estate in fee simple, the consent of whom this act declares shall be obtained?

And if the legislator who owns the paternity of this measure, thought it proper to protect, by requiring their actual consent, the interests of persons entitled in remainder after an estate tail in possession, which interests the tenant in tail may at any time destroy, why did he not in like manner protect the interests of the lord of the manor, in the case of copyholds, and of the tenant where the land is in lease; for unless the barrister or judge should interfere, there is nothing to prevent ten acres of land, held of a manor, or let to farm, from being given in exchange for one acre of other land, which from its peculiar circumstances, may be of equal value to the exchangers, though not of one tenth of the value to the lord or the tenant. It is true, the lord and the tenant may appeal to the barrister, and from him to the judge; but they may not be aware of the proposed exchange until too late; and there seems to be no reason why they should be less favored than many of those whose consent is made necessary.

Then the act requires, or declares sufficient, the consent of the remainder-man, although he may have actually disposed of the remainder. So that, if lands be limited to *A.* for life, remainder to *B.* in fee, and *B.* sells all his interest to *C.*, and afterwards *A.* and *B.* agree to make an exchange of the settled lands for other lands of which *B.* is the owner, the consent of *B.* in respect of the settled lands, in which he has no longer any interest, will be sufficient, and *C.*'s consent is unnecessary; and thus *B.* is constituted the protector of *C.*'s interest, to which his own is directly opposed.

I have also to notice the little attention paid throughout the act to correctness and clearness of expression, originating perhaps in a desire for conciseness, to which perspicuity has been deemed a secondary consideration. The most remarkable instance of this occurs in the use made of the term "disability," which is used sometimes to designate persons not

*sui juris*, without reference to their estate; sometimes to designate persons having a less estate than a fee-simple, whether *sui juris* or not, although such persons cannot be properly said to be under any disability, the disability being by the act removed; and sometimes it is meant to comprehend persons not *sui juris*, whatever may be their estate, together with persons *sui juris*, but having a less estate than a fee-simple; and we are left to determine its import in each particular instance without any explanation, and not unfrequently unaided by the context. In sections 1, 2, and 4, it means personal disability. In section 12 we cannot clearly discover whether it means both personal disability and disability in point of estate, or only the latter; the object of the provision in which it occurs being apparently only to afford the means of ascertaining, in the case of an exchange of settled property, that the parties making and consenting to the exchange have the requisite estates: the reasonable construction is, that it means disability in point of estate; but surely an act of parliament ought not to be so expressed as to oblige us to hunt out its meaning, as if it were a will drawn by some village schoolmaster. In ss. 17 and 18, if we construe it with reference to the object of the provisions, it means both disabilities in point of estate, and disabilities of the person; but the immediate context cuts it down to disabilities in point of estate alone.

The object of one of the provisions of the 12th section appears to be, the affording means of ascertaining the competency of the parties making and consenting to the exchange in the case of settled property; and for this purpose a copy of the limitations contained in the deed or will, under which the person making the exchange is intitled, is required; but if such be the object, the requisition does not go far enough, for it does not invariably happen that the instrument creating the particular estate contains the limitations under which the persons in remainder are entitled.

Sec. 19 declares that in any case in which there is a difference of *not more* than one fifth in the value of the lands proposed to be exchanged, the barrister may insert a provision for the payment in money of such difference; but *no exchange* is to be made where there shall be a difference of *more than one-fifth*. What may be the object of the former part of this section, and what may be the nature of the provision which may be inserted by the barrister, I will not pretend to say; and I must leave it to others to reconcile the latter part of this section with the exception of tenants in fee simple from the operation of the 3d section; while, at the same time, I beg to point out the roundabout mode of declaring that in every case where money is paid for equality of exchange, there may be a provision for its payment inserted.

The language of the 21st section is so very indefinite, that it is impossible to say what costs are or are not within its provisions. In some cases it would be extremely hard upon persons remotely interested, that they should not be

able to recover the expenses they may sustain in opposing an exchange; and perhaps a judge may think himself warranted, by a liberal construction of the act, to make an order for their re-payment; but that is very doubtful; and if he should, it will form no excuse for omitting a clear direction to that effect.

By way of conclusion, we are favoured with a form of the deed of exchange, in which form all exchanges are to be made, with such alterations only as the circumstances of the case may require. When a form is prescribed for general adoption, care should be taken to make its language correct; but here we have to notice the same carelessness as in the other parts of the act. By this form of exchange, the lands given are to be comprised in one schedule, and the lands taken in another; and it is declared that the lands comprised in the first schedule are thereby conveyed to the intent that the same may be or become subject to the same "uses, trusts, powers, conditions, limitations, restrictions, charges, and incumbrances, as the lands comprised in the second schedule now is or may be subject or liable to." Now, after the exchange, the lands in the second schedule will be subject to the same uses as the lands in the first schedule were, and may be disposed of and charged in the same manner as the lands in the first schedule might have been; and therefore the expression "*may be subject or liable to*" is obviously incorrect: it should have been "*might or would have been subject or liable to* if this exchange had not been made."

You have now, Sir, probably, had enough of the act for "*facilitating*" exchanges of lands in common fields. At all events, I have had quite enough,—though, should any of your readers be that way inclined, they may still find an abundant harvest of objections to gather.

S. W. S.

#### APPORTIONMENT OF RENTS, &c.

Sir,

Your correspondent M. contends that according to the right construction, the first part of the second section of the late act for the apportionment of rents, &c., includes persons entitled to determinable, as well as continuing payments; and that the latter part of the same section, commencing with the words "*and every such person,*" applies only to persons entitled to continuing payments; and the reason he gives for this construction is, that *A.* in the case put, having the right to a proportionate part of his annuity given him by the act, may proceed to recover it without the aid of the remedy-giving clause. (Vol. 9, p. 231.)

Now, admitting that *A.* may recover a proportionate part of the annuity, as M. assumes, I do not see that it operates much in favour of his construction; for I suppose he will admit, that if a person entitled to a determinable annuity may recover a proportionate part, without the aid of the remedy-giving clause of the act, so may a person entitled to a continuing annuity. In this respect both parties stand in precisely the same situation. Why then should

we construe the act as expressly giving remedies to the one, and not to the other? Why should one be included, and the other excluded? Besides, if it was intended to confer on some only of the parties included in the first part of the second section, the remedies they may have for the recovery of their annuities, why is the clause introduced by the words "*and every such person*?" The language of the clause is incorrect at the commencement, if it was intended to apply to continuing payments alone; it is incorrect at its termination, if it was intended to apply to determinable payments as well as continuing ones.

But M. appears to forget that other periodical payments besides simple annuities are included in the act, and that as to them, there may be remedies which the party entitled to the proportionate part will not have, unless he takes them under the provision for that purpose inserted in this section. Let us suppose these cases. *A.* is entitled to an annual rent-charge, determinable on his death, with the usual powers of distress and entry. *B.* is entitled for his life to an annual rent-charge, not determinable on his death, with the like powers of distress and entry. In neither case is an apportioned part given by the instrument creating the rent-charge. "*Both,*" says M., "*are within the operation of the first part of the second section, and the representatives of A., as well as the representatives of B., will become entitled to an apportioned part, but both are not included in the provision as to the remedies.*" Now why should not both have the same remedies? If the powers of distress and entry given by the instrument creating *B.*'s rent-charge, be by the act expressly continued to *B.*'s representatives, why should not the same powers given by the instrument creating *A.*'s rent-charge be continued, and as expressly continued, to *A.*'s representatives? Whether it be thought that they are continued, or that they are not, is immaterial to me; for if they are continued,—that is, if the remedy-giving clause extends to determinable as well as continuing payments,—M.'s argument falls to the ground, and the absurdity pointed out in my first letter must be admitted; and if they are not continued, then there is an important defect in the act; it being impossible to contend that the representatives of *A.* ought not to be placed in as good a situation as the representatives of *B.*: so that either way my observation, that the act has not been prepared with due care and skill, will be justified.

It is absurd to say that the act could not have been more clearly expressed. Had the words "*whether determinable on the death of the person interested therein or not,*" or something like them, been introduced, together with the alteration suggested in my last letter, no doubt of this nature could have arisen.

As another instance of carelessness, I would point to the title of the act, observing at the same time, that the act of 11 G. 2, is not an act respecting the apportionment of annuities and other periodical payments.

With most of the observations of your cor-

respondent, in his letter relating to the act for facilitating exchanges of common field land, I of course agree. But he is mistaken in supposing that the parenthesis he has so ingeniously, rather than ingenuously, introduced, can be allowed to remain. The words "or for any enclosed land," are clearly the commencement of another sentence. M.'s parenthesis would cut off this commencement, and couple it to the tag end of the previous sentence, and at the same time render the preposition "for" of no effect whatever. The grammatical construction of the sentence is this: "In exchange for any other land, whether lying in the same or any other common field, or [in exchange] for any enclosed land lying within the same or any other adjoining parish."

S. W. S.

## ABSTRACTS OF RECENT STATUTES.

## WEIGHTS AND MEASURES.

4 &amp; 5 W. 4, c. 49.

This is intituled "An act to amend and render more effectual two acts of the fifth and sixth years of the reign of his late majesty King George the Fourth, relating to Weights and Measures. [Passed 13th August, 1834.]

The preamble recites, that an act passed in the fifth year of the reign of his late majesty King George the Fourth, intituled "An act for ascertaining and establishing Uniformity of Weights and Measures;" and that another act passed in the sixth year of the reign of his said late majesty, intituled "An act to prolong the time of the Commencement of an act of the last Session of Parliament, for ascertaining and establishing Uniformity of Weights and Measures, and to amend the said Act;" and that notwithstanding the provisions of the said recited acts, many sets of weights and measures, of old accustomed and different shapes, have been made, and verified and stamped by the chamberlains as well as by the auditor in the Exchequer, as models of the said new standards, and have been used as standard weights and measures under the said recited act, although different in shape and form from the standards prescribed by the act of the fifth year aforesaid; and it is therefore expedient that such standard weights and measures should be made legal, and that the auditor and comptroller general, or some other superintending officer of the Exchequer, should be empowered to compare and verify, and stamp as so compared and verified, standards of length, weight, or measure, although not exact models and copies in shape and form of the respective standards of length, weight, and measure deposited under the provisions of the said first-recited acts in the office of the said chamberlain and auditor; and that it is expedient that after a limited period the use of all weights and measures, not in conformity with the weights and measures established by the said recited acts should be prohibited, and that the

use of the heaped measure should be abolished.

The following is the substance of the enactments.

1. Provisions in recited acts as to models and copies of standard weights and measures, repealed.
2. Weights and measures, stamped at the Exchequer, declared legal, although not similar in shape to those required by recited acts.
3. Superintending officer of Exchequer may verify and stamp weights and measures of other form than those prescribed by 5 G. 4, c. 74.
4. Heaped measures abolished after the first of January, 1835.
5. Copies of imperial standards to be provided by order of magistrates in quarter sessions for counties in England and Wales, and by meetings of justices in Scotland.
6. Copies to be provided by grand juries in Ireland.
7. Judges may order copies in counties in Ireland, when it has not been done by grand juries.
8. Power of providing additional copies when requisite.
9. Return to be made by clerks of the peace on 1st of March, 1836.
10. Power to magistrates of towns, &c. to provide copies of the imperial standards.
11. Weighmasters in Ireland to be supplied with beams and scales, and accurate copies.
12. The stone weight, hundred weight, and ton.
13. All articles to be sold by avoirdupoise, except as herein stated.
14. All weights and measures to be stamped by inspectors. Penalty for making any other measures or weights, or using any unstamped, light, or defective weights and measures.
15. Regulation as to fair prices of commodities in Scotland.
16. Inspectors to enter into recognizance.
17. Powers to magistrates to inspect weights and measures.
18. Penalty for counterfeiting stamps on weights and measures.
19. Copies of the standard weights and measures, which shall have been worn and mended, to be sent to the Exchequer to be re-verified.
20. Officer at Exchequer to keep a register of copies verified.
21. As to penalties in England and Ireland.
22. Form of conviction.
23. Appeal to next general quarter sessions of the peace.
24. As to penalties in Scotland.
25. Appeal in Scotland to Commissioners of Justiciary at Circuit Court. 20 G. 2, c. 43.
26. 4 Anne (1) and 5 G. 4, c. 110, repealed, except so far as they relate to duties, &c. of weighmasters.
27. Power of ward inquests, &c. not to be interfered with.
28. Rights of Founders' Company reserved.
29. In actions, magistrates may plead the general issue.
30. Act may be amended, &c., this session.

## SUPERIOR COURTS.

## Rolls Court.

## MORTGAGE DEBT.—HEIR AND EXECUTOR.

*Where the heir of a mortgagor succeeding to the mortgaged estates, joins in a conveyance of the mortgage, changing the rate of interest and mode of payment thereof, as well as creating a new equity of redemption; and it is in proof, that the new mortgages refused to take an assignment of the former mortgage, the conveyance becomes a new mortgage, and the personal estate of the heir so acting, is primarily liable.*

The facts of this case, and points in issue, are sufficiently expressed in the following judgment, which was delivered upon consideration, some days after the case was argued.

The Master of the Rolls.—Sackville, Earl of Thanet, being in want of a sum of 80,000*l.*, borrowed it of Lord Petre. As a security for it, he conveyed to him the manor and lands of Silston, and other lands of considerable value. Lord Petre afterwards married, and assigned to the trustees of the marriage settlement, 15,000*l.*, part of the 80,000*l.* due to him from Sackville, Earl of Thanet; and he also assigned to them one-fifth of the mortgage securities. Sackville, Earl of Thanet, died without having paid any part of the mortgage debt; he was succeeded by his next brother, Charles, Earl of Thanet, who became desirous of taking up the mortgage to the extent of 50,000*l.*, but having no other means of paying that sum, Lord Petre, on his behalf, applied to a Mr. Dennison, to lend him so much. Mr. Dennison was advised not to lend his money upon land that was charged with a prior incumbrance; he declined, therefore, to take any assignment of Lord Petre's mortgage, or any part of it, but stated himself ready to lend the 50,000*l.* upon the security of the manor and lands of Silston alone, and to leave the rest of the lands included in the mortgage of Lord Petre, as a security for the remainder of that sum; this arrangement was consented to by all parties, and the trustees under the marriage settlement of Lord Petre, who had become interested to the extent of 15,000*l.*, as well as Lord Petre himself, joined with Mr. Dennison and Charles Earl of Thanet, in the execution of the deed of conveyance. In that deed, it was stated, that Lord Petre and his trustees, at the request, and by the direction of the Earl of Thanet, joined in conveying the manor and lands of Silston to Mr. Dennison, as a security for the sum of 50,000*l.*, which he had advanced to Lord Petre in part satisfaction of his mortgage. The question was, whether that transaction was to be considered as a mere assignment of a prior security, with an auxiliary engagement on the part of Charles, Earl of Thanet; or whether it was to be received in a different light, and as a new mortgage of the Silston estate, released from the mortgage to Lord Petre. His Honor was of opinion, that it was to be viewed

as the latter. It was, in the first place observable, that the rate of interest to Mr. Dennison, was changed from what it had been to Lord Petre, from 4 to 5 per cent., and the days for the payment of that interest were also changed, and what was still more important, a new equity of redemption had been introduced; Mr. Dennison having refused to advance his money, unless the Earl of Thanet undertook not to redeem the mortgage within five years. His Honor was of opinion, that this transaction was not merely an assignment of part of the original mortgage to Lord Petre, with an auxiliary engagement; but that it was substantially a release of the lands in mortgage to Lord Petre—that it was a new mortgage of the same lands by Charles, Earl of Thanet, and it was, therefore, to be considered as the personal debt of Charles, Earl of Thanet, as between his heirs and executors, and that his personal estate must be first applicable to the payment thereof. The principle upon which he decided the case was this: If money was borrowed on mortgage, the mortgage was the personal debt of the mortgagor; and if he died, the mortgage being unpaid, the mortgage debt, like all other debts, must first be paid out of the personal estate, and the real estate mortgaged, was liable only if there was a deficiency of the personal estate. If the mortgagor died, the mortgage debt being unpaid, and the mortgaged lands descended to his heir, it could not be the personal debt of the heir who succeeded to the land, and whose personal estate could not be affected by the mortgage; unless something be done, which would give a claim as between his heir and executor, to treat it as a charge upon his personal estate. If the mortgagee pressed for the payment of the mortgage money from the heir, and he procured a third person to pay the mortgage money, and to take an assignment of the security from the heir, by his entering into a bond or covenant with the assignee to pay the mortgage debt, the Court reasonably inferred, that it was not to be considered, that the heir intended to make it his personal debt. The intention of the heir was considered by the Court, as merely to give to the assignee of the mortgage, an auxiliary security by his bond and covenant, and that it was not his intention to change the character of the debt, otherwise with respect to the personal estate. Having regard to these principles, his Honor was clearly of opinion, that the transaction which had taken place between these parties, was not to be considered as a mere assignment of a prior security, with auxiliary engagements on the part of Charles, Earl of Thanet; but under the circumstances of the case, it must be taken to be a new mortgage, and primarily payable out of the personal estate of Charles, Earl of Thanet.<sup>a</sup>

*Lord Barham v. Earl Thanet*, sittings at the Rolls after Trinity Term.

<sup>a</sup> The leading cases cited in the arguments

## WILL.—POWER OF APPOINTMENT.

*A power of appointment may be well exercised in an instrument, such as a will, disposing of the "rest, residue, and remainder of all my real and personal estate," without referring in express terms to the powers, if the intention to exercise it can be collected from the instrument.*

*A previous appointment under a power may be revoked absolutely without substituting an express appointment, except where the instrument is purposely made to substitute, and fails by defect in it.*

*Semble, that the distinction between property absolutely his own and that under power of appointment, is carried too far.*

The questions in this case arose on the wills of Mrs. Davies and Mrs. Bonsall, sisters. The former, by will, left the whole of her property, real and personal, to trustees, in trust for Mrs. Bonsall during her life, with power of appointment, expressed in the usual terms. She afterwards purchased an estate and other property, and made a codicil to her will, not altering the bequest to the sister. Amongst the property so given, was a gold watch, pianoforte, music, and other matters, which the trustees allowed to remain in the possession and use of Mrs. Bonsall. Mrs. Bonsall by her will, executed in 1829, revoking all former wills—(she had made several)—bequeathed the rest, residue, and remainder of her real and personal estate, as therein stated. She specifically bequeathed the pianoforte, and music, and gold watch, and other parts of the property left by her sister, describing the watch as the property of her sister. The testatrix had not only personal property of her own, but also real property, as well as a power of appointment over that of her sister. The will of 1829 was finally established, after much litigation in the Ecclesiastical Courts; and the questions were now—first, whether, as the Ecclesiastical Courts have no jurisdiction over real estate in wills, being confined to the personalty only, the will of 1829 did or did not operate as a revocation of the testatrix's former disposition of her real estate; and secondly, whether the residuary clause passed the property over which she had a power of appointment, as well as her own.

These questions were argued for the better part of two days, by several counsel for the parties interested.

The *Master of the Rolls*.—It would be impossible for any person out of a Court of Justice to entertain the least doubt that the testatrix intended her last will, which she executed in 1829, to be a substitution for all the testamentary dispositions which she had previously made. The doubt which arises upon this case is, unfortunately, owing to the technical reasoning applied by Courts of Justice to subjects

of this nature. The distinction which the Courts have taken between absolute property and property over which persons have only a power of disposition, is a distinction which has been very much regretted by some of the ablest Judges who have sat in this Court; and Lord Eldon has justly observed, that in nineteen cases out of twenty this distinction has the effect of defeating the intention of testators, which it professes to effect. Such, however, is the law on this subject, so firmly established by a series of decisions that the mischief may perhaps be considered as irreparable. It is true, that it is not necessary that a person, in order to dispose of property over which he has a power, should refer in express terms to his power: it is enough if it appears upon the context of the instrument that the party had the power in view and intended to execute it. The main question here is, whether the testatrix, in disposing of "the rest, residue, and remainder of her real and personal estate," meant to dispose merely of that property which was absolutely her own, without including that over which she had a power of appointment, or whether she meant to include all the property of which she had the power of disposing. With respect to her personal estate, it had been decided by a court of competent, and indeed exclusive jurisdiction, that the will of 1829 was a revocation of all previous wills; but it is argued, that as the court which decided that question had no jurisdiction as to real estate, the question as to the real estate is still open, and the will of 1829 is no revocation of a previous disposition of real estate, over which the testatrix had a power of appointment, because there is no substitution by way of express appointment in exercise of the power for that previous disposition. I cannot adopt that argument; it is contrary to authority, and contrary to common sense. It is true, that where a party revokes an instrument for the purpose of substituting a new disposition in lieu of a prior one, and the substitution fails by reason of some defect in the mode in which it is attempted to be carried into execution, Courts of Justice have inferred that the revocation cannot prevail, because the only intent of the revocation was to give effect to the substitution. But a man may desire to revoke a particular instrument without any intention to make a substitution; and if he plainly and distinctly revokes a prior instrument, the Court will give effect to such revocation.

Another consideration in this cause is, the question which arises as to the effect of a codicil to the will of Mrs. Davies, the sister of the testatrix. By that will Mrs. Davies gave all her real and personal estate to trustees, upon trust to pay the rents and profits to Mrs. Bonsall during her life, to whom she gave a power of appointment absolutely. After making her will, Mrs. Davies purchased an estate in Cardiganshire, and she afterwards made a codicil to her will, which if it operated as a republication of her will, would have the effect of passing the after purchased estate. There appears to be some confusion in the language

and judgment, were *Donisthorpe v. Porter*, 2 Eden, 162. S. C. Amb. 600; *Lushington v. Sewell*, 1 Sim. 435, and the cases cited in both those cases.

of the codicil, but I cannot, upon close examination of it, entertain a doubt that it operated as a republication of the will. The trustees under that will invested the trust property in the funds, but they did not think that their duty required them to insist upon converting the gold watch and pianoforte into money for the purposes of the trust, and they allowed Mrs. Bonsall to have the personal use of those articles. I cannot infer that either the trustees or Mrs. Bonsall were guilty of any impropriety in respect of this proceeding; but I must suppose that she was properly in possession of those articles, and being so possessed, and also entitled to the estate in Cardiganshire under the will of her sister, Mrs. Bonsall makes a specific disposition by her will of that estate, and also of the trifling articles—trifling in amount, but important with reference to this question—one of which, the gold watch, she describes as the property of her sister, and then follows the residuary clause disposing of all the residue of her real and personal estate. I am clearly of opinion that the testatrix intended that residuary clause to extend to all her property, as well that which was strictly and technically her own, as that in respect of which she derived a power of appointment from her sister, and the decree must be made accordingly.\*

*Hughes v. Turner*, Sittings at the Rolls after Trinity Term, 1834.

### King's Bench Practice Court.

#### EJECTMENT.—SPECIAL SERVICE OF DECLARATION.—BELIEF.

*Under what circumstances the Court will allow judgment to be signed against the casual ejector, although the service has not been strictly conformable with the rule as to personal service.*

In this case an application was made for leave to sign judgment against the casual ejector. The affidavit on which the application was founded stated that the deponent had gone to the premises in question and knocked at the door. No answer was returned; but shortly afterwards the deponent heard the footsteps of some person, who he verily believed was the tenant in possession, come to the door, and stand in the attitude of listening. The deponent then read over the declaration and notice, and explained its object, and having pushed a copy of it through the window adjoining the entrance door, there left it.

*Patteson, J.*, refused to allow a rule absolute to go for signing judgment against the casual

\* Among the cases referred to in the arguments and judgment, were *Standen v. Standen*, 2 Ves. 589, and 6 Bro. P. Cas. 193; *Andrews v. Emmott*, 2 Bro. C. C. 297; *Mac Leroth v. Bacon*, 5 Ves. 159; and *Nannock v. Horton*, 7 Ves. 391.

ejector, but granted a rule nisi, to be served in the usual way.

Rule nisi accordingly.—*Doe v. Roe*, H. T. 1835. K. B. P. C.

#### INTERPLEADER ACT.—SHERIFF.—RETURN OF WRIT.—FUNCTUS OFFICIO.

*Although a sheriff may have gone out of office for more than six months, he may be required, under certain circumstances, to make a return to a writ of fi. fa. received by him while he was in office.*

This was an application to compel a sheriff to return a writ of *fi. fa.*, although more than six months had expired since he retired from office. The facts of the case, as they appeared from the affidavits, were these:—About three years since a writ of *fi. fa.* at the suit of a person named Wilton, the present plaintiff, was issued against the goods of the defendant, and directed to the sheriff of Dorsetshire. The sheriff, pursuant to the exigency of the writ, entered on the premises of the defendant and seized his goods. While in possession, he received notice that a commission of bankrupt had issued against the defendant, and that assignees had been appointed. The sheriff accordingly applied to this Court, from which the process had issued, for relief under the Interpleader Act. The execution creditor and the assignees appeared in obedience to the rule granted by the Court, and a rule was then drawn up granting permission to the sheriff to withdraw from possession until the question of the validity of the commission should be decided, and authorizing him to apply to the Court for leave to re-enter and take possession of the goods previously seized by him. An issue was afterwards tried in which the assignees were plaintiffs, and the event of that action was a nonsuit. An application was then made to the full Court to compel the sheriff to re-enter and take possession of the goods. This, however, the Court declined doing, as they had no authority to compel him to re-enter, although, if he thought proper, he might apply to the Court for leave for that purpose. The present application, therefore, was not to compel him to re-enter under the writ, but to make a return to it, shewing what he had done under it.

Cause was shewn against the rule so obtained; and it was contended, that as more than six months had expired since the sheriff had left office, he could not now be required to re-enter, or to make any return to the writ. If he were required to make any effectual return to it he must re-enter. But how was it possible for him so to do, when he had no official seal; when the bailiff who originally seized was dead, and when all identity of the property must necessarily have been destroyed? If he were required, under such circumstances, to re-enter, it was in fact requiring him to render himself a trespasser.

On the other hand, in support of the rule it was submitted, that the sheriff was bound

to make a return as to what he had done under the writ of *fi. fa.* which he had executed, and in the execution of which the plaintiff was interested.

*Cur. adv. vult.*

*Patteson, J.* (after taking time to consider) said, that he was of opinion that as the plaintiff was interested in the process issued against the goods of the defendant, he was entitled to have the rule for returning the writ made absolute.

Rule absolute.—*Wilson v. Chambers*, H. T. 1835. K. B. P. C.

CENTRAL CRIMINAL COURT.—CERTIORARI.—  
MISDEMEANOR.—CONSPIRACY.

*Although the Judges attend the Central Criminal Court for the purpose of trying prisoners charged with offences before that tribunal, yet in certain cases, where the indictment is for a misdemeanor, the Court will allow a writ of certiorari to issue under certain circumstances, for the purpose of removing the indictment from that Court into the King's Bench.*

In this case an indictment was preferred against the defendant, charging him with having conspired with certain other persons for the purpose of procuring a divorce between two persons mentioned in the indictment. The indictment had been preferred and found at the Central Criminal Court.

An application was now made for a writ of *certiorari* to be directed to the Judges of that Court, in order to remove the indictment into the Court of King's Bench.

*Patteson, J.*, suggested that it was by no means a matter of course in the practice of the Court of King's Bench to grant a writ of *certiorari* for the removal of an indictment from the Old Bailey into this Court; and the ground was, that as the Judges of the superior Courts at Westminster attended at those sessions to try prisoners, neither the same reason, nor the same necessity existed for the removal of an indictment found and proposed to be tried there. It was only under very special circumstances indeed that the Court would allow the writ of *certiorari* to issue for the removal of an indictment from that Court. Perhaps, in the present case, such circumstances might exist.

The affidavits on which the application was founded, were then read; and from the statements contained in them, it appeared, that the defendant had appeared, pursuant to his subpoena, at the trial of a cause in which the man and wife in question were interested, and there given evidence. His affidavit denied any connection with any transaction, which could have a tendency to cause a divorce; and it further proceeded to state, that in his opinion, very nice questions both of law and fact with respect to divorce would arise in the investigation of the charges preferred. The affidavit further stated, that the defendant was anxious to have the assistance of King's counsel in the con-

duct of his defence, but that no such counsel practised at the Central Criminal Court; and he was further desirous that the indictment should be tried by a special jury.

*Patteson, J.*, intimated, that as the assistance of King's counsel might be obtained at the Central Criminal Court, and the Judges presided there, it was very doubtful whether the writ of *certiorari* ought to be allowed.

In support of the application, it was submitted, that although the assistance of King's counsel might be procured at the Old Bailey, yet obtaining it there would be attended with a great increase of expense. Again, by the practice at the Central Criminal Court, although the Judges did attend there for the purpose of trying prisoners, misdemeanors were always tried after the Judges had gone. But although the Judges themselves might try this indictment, there would be no means of reviewing the opinion of the Judge who tried it, as there would if it were tried in the Court of King's Bench.

*Patteson, J.*, expressed some doubt, as to whether a sufficient case had been made to entitle the defendant to the writ of *certiorari*, which he prayed. His Lordship, however, took time to consider.

*Cur. adv. vult.*

On a subsequent day, *Patteson, J.*, stated, that he had consulted the other Judges, and they were of opinion, under all the circumstances, that the writ of *certiorari* might go.

Rule granted accordingly.—*Rea v. —*, H. T. 1835. K. B. P. C.

Common Pleas.

BAIL-BOND.—SHERIFF.—ASSIGNMENT.—AT-  
TESTATION BY WITNESSES.

*Where a sheriff executes an assignment of the bail-bond, pursuant to the statute of Anne, the witnesses in whose presence he executes it, need not attest the assignment at the time of its execution.*

This was an application for a rule, to shew cause why the verdict found in this case for the plaintiff should not be set aside, on the ground that the requisites under the statute of Anne, c. 16, s. 20, had not been complied with. It was an action on a bail-bond: the plea was, that the bond had not been duly assigned. It was proved that the sheriff, pursuant to the statute, had assigned the bail-bond in the presence of two witnesses, but one of whom had not attested it at the time of execution, but did so afterwards. This, it was contended, was not a sufficient compliance with the statute, as the words were, "attesting it under his hand and seal, in the presence of two or more credible witnesses." These words must mean, that the witnesses in whose presence the execution took place, should attest it at the time.

*Per Curiam*.—If the legislature had intended, that the attestation of the witnesses should take place at the time of executing the bail-bond, it would have been so expressed. No words are here introduced, shewing, that the



attestation must take place at that time, and therefore, we think it was unnecessary. The verdict in this case, therefore, for the plaintiff, we think ought to stand.

Rule refused.—*Philips v. Barlow and another*, H. T. 1835. C. P.

### Exchequer of Pleas.

#### BAIL.—DESCRIPTION.—RESIDENCE.—COSTS OF OPPOSITION.—EXCEPTION.

*If a plaintiff does not enter in the book his notice of exception, but the defendant gives notice of justification, the omission is waived, and cannot be taken advantage of when the bail comes up to justify.*

*Where bail reside in a parish, it should be shewn in the notice of bail, in what street of that parish they reside.*

*Where bail are rejected on purely technical grounds, the Court of Exchequer will not allow the costs of opposition.*

In this case, when the bail appeared to justify, the plaintiff's counsel was proceeding to oppose them, when the defendant's counsel objected, that no notice of exception had been entered in the proper book. The defendant had, however, given notice of justification.

The Court was of opinion, that giving notice of justification, waived the want of entry of exception.

It was then objected, that the bail were only described as of a parish, without mentioning the street in that parish in which they lived; if the parish were large, it might be impossible to find the bail by such a description of residence.

The Court thought the objection a good one, and rejected the bail accordingly.

On application for the costs of opposing the bail, the Court refused them, as they had been rejected on purely technical grounds.

Bail rejected.—*Hanwell's Bail*, H. T. 1835. Excheq.

#### BAIL.—AFFIDAVIT OF JUSTIFICATION.—AMENDMENT.—COSTS.

*If the bail justify, pursuant to the Rules of T. T., 1 W. 4, and their affidavit uses the word "possessed," instead of "worth," in stating their sufficiency, the Court will not henceforth allow the affidavit to be amended.*

In this case, bail having been opposed on the ground of their affidavits of justification having stated them to be "possessed," instead of "worth" certain property, an application was made to amend them.

The Court intimated, that several terms ago it had been announced to the profession, that such amendments would not for the future be allowed, and therefore refused to permit the defendant to amend.

Bail rejected accordingly.—*Naylor's Bail*, H. T. 1835. Excheq.

#### BAIL.—RESIDENCE.—COSTS OF JUSTIFICATION.

*An affidavit of justification, pursuant to the Rules of T. T., 1 W. 4, must clearly shew, that the bail have "resided" at the place at which they are described.*

In this case, the affidavit of justification described the bail as of Stockwell Gate, Mansfield, but did not go on to state that he had "resided" there. On this ground the bail were objected to, as it did not appear that the bail resided there, and therefore, the defendant was not entitled to his costs of justification.

The Court thought, that it was not sufficiently clear that the bail resided at the above place. The defendant, therefore, cannot be allowed the costs of justification.

Costs disallowed.—*Herald's Bail*, H. T. 1835. Excheq.

#### INTERPLEADER ACT.—SHEWING CAUSE AT CHAMBERS.—STAY OF PROCEEDINGS.

*In the Exchequer, a rule nisi under the first section of the Interpleader Act, is no stay of proceedings, unless notice of the motion for that purpose has been given to the parties against whom it has been obtained.*

*Although cause cannot be shewn at chambers, against such a rule obtained by a sheriff under the sixth section of the act, yet it may be so shewn, where the rule has been obtained under the first section of the act.*

In this case a rule nisi was obtained by a stakeholder, under the first section of the Interpleader Act, 1 & 2 W. 4, c. 53, requiring the persons who claimed an interest in the property sought to be recovered from him, to appear before the Court and state what these claims were. The rule having been obtained, it was sought further to have it drawn up with a stay of proceedings. It being however stated, that the applicant had not given notice to the parties against whom he moved of his intention to apply for this rule, the Court refused to allow it to be so drawn up.

The rule having been moved for and obtained late in the term, it was suggested, that as the rule could not be served in such a manner that the parties could fairly be required to shew cause in the term, cause had better be shewn at chambers.

The Court permitted the rule to be drawn up, to shew cause at chambers, and intimated, that the present rule was different from that obtained by the sheriff, for in that case, the Court, and not a Judge at chambers, had jurisdiction to decide on the matter.

Rule nisi accordingly.—*Smith v. Wheeler*, H. T. 1835. Excheq.

## CIRCUITS OF THE JUDGES.

England and Wales.

SPRING CIRCUITS. 1886.	HOMER.	MIDLAND.	NORFOLK.	OXFORD.	NORTHERN.	N. WALES.	S. WALES.	WESTERN.
	LCJ Denham J. Gaselee.	LCJ Tindal J. Littledale	LCB Abinger J. Vaughan.	J. Park. J. Coleridge	B. Parke. B. Alderson.	B. Bolland.	J. Williams.	J. Patteson. B. Gurney.
Thurs. Feb. 26	-	-	-	Reading	Durham	-	Swansea	-
Saturday 28	-	-	-	-	-	-	-	-
Monday Mar. 2	-	Northamp- [ton]	-	-	-	-	-	Winchester
Tuesday 3	-	-	-	-	-	-	-	-
Wednesday 4	Hertford	-	-	-	Newcastle -[& town]	-	Carmarthen -[& burgo]	-
Thursday 5	-	-	-	Oxford	-	-	-	-
Friday 6	-	Oakham	-	-	-	-	-	-
Saturday 7	-	Lincoln and [city]	-	-	-	Welch Pool	-	New Sarum
Monday 9	Chelmsford	-	Aylesbury	-	Carlisle	-	-	-
Tuesday 10	-	-	-	Worcester & [city]	-	-	-	-
Wednesday 11	-	-	-	-	Bala	-	-	-
Thursday 12	-	Nottingham [and town]	Bedford	Stafford	Appleby Lancaster	Carnarvon	Haverford- [west & town]	Dorchester
Saturday 14	-	-	Huntingd'n	-	-	-	-	-
Monday 16	Maldstone	-	-	-	-	-	-	Exeter & [city]
Tuesday 17	-	Derby	Cambridge	-	-	-	-	-
Wednesday 18	-	-	-	-	-	Bonnamaris Ruthin	Cardigan	-
Saturday 21	-	Leicester & [boro']	Shrewsbury	-	-	-	-	-
Monday 23	Lewes	-	Bury St. Ed.	-	-	-	Brecon	-
Tuesday 24	-	-	-	-	-	-	-	Launceston
Wednesday 25	-	-	-	-	-	Mold	-	-
Thursday 26	-	Coventry & [Warwick]	Hereford	-	-	-	Presteign Chester	-
Saturday 28	-	-	Norwich & [city]	-	York & city	Chester	-	-
Monday 30	Kington	-	-	Monmouth Gloucester [& city]	-	-	-	Taunton
Tuesday 31	-	-	-	-	-	-	-	-
Sat. April 4	-	-	-	-	-	-	-	-

## EXCHEQUER EQUITY SITTINGS.

After Hilary Term, 1885.

[The Sittings stated at p. 303 are altered as follows:

Before the Lord Chief Baron.

Monday Feb. 9 | Petitions, Motions.  
 Tuesday, Feb. 10.—Small v. Attwood, Plea, by order.  
 Bennett v. Atkins, Further Directions.  
 Baker v. Carter, ditto.  
 Hulton v. Sandys } ditto.  
 Same v. Dart }

Wednesday Feb. 11 } Pleas, Demurrers, Ex-  
 ceptions, and Fur-  
 ther Directions.

Before Mr. Baron Alderson.

Thursday . . . 12 }  
 Friday . . . 13 } Causes.  
 Saturday . . . 14 }  
 Monday . . . 16 }  
 Tuesday . . . 17 }

Before the Lord Chief Baron.

Wednesday . . . 18 | Petitions, Motions.  
 Thursday . . . 19 } Pleas, Demurrers, Ex-  
 Friday . . . 20 } ceptions, and Fur-  
 ther Directions.  
 Saturday . . . 21 | Petitions and Motions.

Before Mr. Baron Alderson.

Monday . . . 23 }  
 Tuesday . . . 24 } Causes.  
 Wednesday . . . 25 }

The Lord Chief Baron will also sit one or two days in March before he goes the circuit.

## NOTES OF THE WEEK.

## LAW PROMOTIONS.

Sir Charles Wetherell has been appointed Temporal Chancellor of the County Palatine of Durham, in the place of R. H. Williamson, Esq. deceased. Mr. Serjeant Atcherley has been promoted from the office of Solicitor to that of Attorney-General, in the place of Lord Abinger; and Mr. Crosswell has been appointed Solicitor-General for the County Palatine.

Mr. Amos has received the appointment of Deputy Recorder of Nottingham.

## LAW REFORM.

In answer to several inquiries which have been made regarding the projected Law Reforms of the next session (some general hints of which have been given in the newspapers) we can only say that so far as we have heard, the plan will be satisfactory to the public, and not objectionable to the members of the profession, who have always concurred in judicious alterations. We shall probably be enabled in an early number to give our readers some precise information on the subject.

## INNS OF COURT.—REGULATIONS FOR CALLS TO THE BAR.

We understand that the second regulation, mentioned at p. 290, will be altered as follows:

"That all persons of the full age of

twenty-four and upwards be admitted to the Bar after keeping twelve terms, although their names have not been longer on the books of the society, provided in all other respects they be entitled to be called to the Bar according to the existing usages, orders, and regulations of the several Inns of Court."

#### LANCASHIRE ASSIZES.

The arrangements for holding the assizes at Liverpool at well as Lancaster not being completed, they will be held at Lancaster only during the ensuing circuit.

### ANSWERS TO QUERIES.

#### Common Law.

##### MARRIAGE.—MINORS. P. 272.

If the infant was married by *banns* (the only way in which, without consent, he could *legally* be married) of course he cannot dissolve the marriage, as consent is not required. This is so very obvious that I cannot think it the object of *B. S. M.'s* enquiry, though as his question is so vague, I am obliged to consider it as a part to be answered. I suspect, by "*legally solemnised*," he means by license, *legally* as far as concerns the priest, place of celebration, &c., but that the license itself was obtained in an underhand manner. This would in all probability be by a false oath; and 4 G. 4, c. 76, s. 23, expressly enacts "that if any *valid* marriage, solemnized by license, shall be proved by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of 21 years, contrary to the provisions of this act, by means of any party falsely swearing to any matter to which such party is hereinbefore required personally to swear, such party shall forfeit all property accruing from the marriage." Here we see the only effect of a licence being improperly attained is, that the aggressor shall forfeit his pecuniary advantages; but not a word is said about the marriage itself being voidable: on the contrary, the clause begins with the words "*any valid marriage*," as if such validity were a matter of course; and in *R. v. Birmingham*, 8 B. & C. 29, it was held, that where a marriage was solemnized by license between a man and woman, the man being a minor, whose father was living, and who did not consent to the marriage, the marriage was nevertheless valid. I think I have said enough to shew that the infant's marriage, however improperly entered into, is at all events indissoluble.

J. O.

### QUERIES.

#### Property and Coheirship.

##### MORTGAGE.—TENANT FOR LIFE.

A. by will bequeathed to B. the interest of 6550*l.* money in the funds, to be paid to B.

during his life, and after his death to his children generally. At the time of the devise, B. had three children, a son and two daughters. The son was to take (after B.'s death) at 21, and the daughters at 25 or marriage. Some time back B. and, it seems, the three children, mortgaged this property. It would seem that under the will B. could only mortgage to the extent of his life interest in this money. After the mortgage, one of the daughters married, and her husband, at the time of the marriage, knew nothing of the mortgage, and has had nothing whatever to do with it. As the parties have not paid the interest due on the mortgage, the mortgagees threaten to proceed against the husband of this lady, and also against her, for the recovery of the interest. It will be seen that by the will the property is given to B., and after his death, to his children generally; and therefore, inasmuch as B. is still alive, the right of these children has not yet accrued; besides which, if B. has any more children, they will be equally entitled with the others. B. is now 70 years of age, and unmarried. Is this a good mortgage? As the right of the children had not accrued, could they mortgage the property? Is not B. the only party that could mortgage, and he merely to the extent of his life interest? Are the children bound by it? What is the best course for the married daughter and her husband to pursue, under the circumstances?

J. S.

#### Common Law.

##### HEIR.—CROWN.

About twenty years ago the Crown disposed of property of the value of several thousand pounds, to some charity, in consequence of their finding no heir at law to it. A gentleman now claims to be heir at law to the above, and can shew a good title. Is the heir at law entitled to satisfaction from the Crown, he not having heard of the disposal of the above until lately?

M. N. R.

##### GAME LAWS.—SHOOTING.

Can any of your correspondents inform me whether there is any penalty for shooting small birds (not game) in the open fields?

E.

### THE EDITOR'S LETTER BOX.

The suggestion of a list of the Law Lords shall be attended to.

A list of the King's Counsel who attend the several Equity Courts, shall be given as early as it can be correctly formed.

The last proposal of our correspondent T. O. B. will be acceded to.

The Queries and Answers of "A Subscriber;" R. H. C.; and I. H., have been received.

C. S. T. is mistaken in supposing that the former learned member for Kidderminster has been returned to the present Parliament.

The First Part of the *Quarterly Digest* for 1835, will be published on the 21st inst.

# The Legal Observer.

Vol. IX. SATURDAY, FEBRUARY 21, 1835. No. CCLIV.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON THE RIGHTS OF A SUCCESSOR TO THE THRONE EN VENTRE SA MÈRE.

SOME doubt has lately arisen, with reference to the lately rumoured situation of her Majesty, as to the rights of a successor to the throne in *ventre sa mère*, on the death of a reigning monarch. As it appears to us, the authorities admit of no doubt on the point; but as the matter is of considerable interest, and has been only recently settled, we shall shortly state what we consider to be the law relating to it.

The rules with respect to the descent of the crown, follow those relating to the descent of real property, with only one exception—that in case there be two or more daughters the crown descends to the eldest, and not, as in the case of lands, to all of them as coparceners. Another exception until very recently existed, that with respect to the crown, the half blood was no bar to the succession; but as by a recent act<sup>a</sup> this is no longer a bar to the descent of lands, this last distinction no longer obtains.

Let us see, therefore, what the rule is as to the descent of lands in the case of the death of their owner leaving an heir *en ventre sa mère*. This is clearly laid down by Sir W. Blackstone,<sup>b</sup> following Brooke.<sup>c</sup> "Heirs presumptive are such who, if the ancestor should die immediately, would in the present circumstances of things be his heirs, but whose right of inheritance may

be defeated by the contingency of some nearer heir being born, as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son. Nay, even if the estate hath descended by the death of the owner, to such brother or nephew or daughter, in the former cases, the estate shall be divested and taken away by the birth of a posthumous child; and in the latter it shall also be totally divested by the birth of a posthumous son."

The only question as to this which has ever existed among lawyers, is as to the rights to the intermediate profits between the death of the owner and the birth of the heir. But it seems now settled, that they belong to the person entitled to the intermediate estate<sup>d</sup> until it is divested.

The rule therefore is, that on the death of a person entitled to lands, leaving his widow *enceinte*, the presumptive heir is entitled to the lands until the birth of the infant, who is then absolutely entitled to them.

The doubt has been, however, whether this rule applied to the succession to the crown; whether, on the demise of a reigning monarch leaving a direct heir *en ventre sa mère*, the right to the crown vested in such heir, or in the heir presumptive, subject to be divested on the birth of the direct heir. We consider it to be quite clear, that in such an event the crown, and the right to the allegiance of the subject, would vest in the heir presumptive, subject to be so divested.

<sup>a</sup> 3 & 4 W. 4, c. 106, s. 9.

<sup>b</sup> 2 Bla. Com. 208.

<sup>c</sup> Tit. Descent, 58.

<sup>d</sup> See *Basset v. Basset*, 3 Atk. 203. *Per* Lord Hardwicke, 2 Wils. *Per* De Grey, C. J. Harg. Co. Lit. 11 b.

We found this opinion on the united authority of all the eminent lawyers who were in parliament on the passing of the last act\* relating to the succession to the crown, when this point was much discussed. In the debates respecting it in the House of Lords, the present Lord Chancellor, after admitting it to be a difficult point, and declaring that he could find no direct authority on it, stated, that a child before its birth could not be seized of real property, but that until the birth it vested in the presumptive heir: and further gave it as his opinion, that the crown stood in the same situation. Lord Brougham was of the same opinion, and cited as a somewhat parallel case, the instance of Geoffrey, the son of Henry 2, who was Duke of Brittany, which he held as a fief of the duchy of Normandy. Henry was Duke of Normandy as well as King of England. Geoffrey died leaving a widow (Constance) *enceinte*, and a daughter, Eleanor. Eleanor was immediately recognized as Duchess of Brittany, and no one held that allegiance was due to the child *en ventre sa mere*. Constance afterwards gave birth to Arthur, who became Duke the moment he was born. In the House of Commons, Sir Charles Wetherell was of the same opinion, but was anxious to introduce a declaratory clause to that effect. Sir John (then Mr.) Campbell also stated his opinion to be the same.

Thus it appears that all the authorities are agreed as to the point. But it will also be seen, that the act 1 W. 4, c. 2, distinctly recognizes the same principle. This act enacts (s. 1), that the Duchess of Kent shall be guardian of the Princess Alexandra Victoria until of age, if at the demise of his Majesty there shall be no living issue of her present Majesty, and during such minority shall exercise the regal power and government; but it is provided, "that if after the demise of his said Majesty, a child of his said Majesty should be born of her said Majesty, all the powers and authority by this act given and granted to her said Royal Highness the Duchess of Kent, shall upon the birth of such child cease and determine. And by the 2d section it is enacted, that if there shall not be any child living; born of her Majesty, the Privy Council shall cause her Royal Highness Alexandra Victoria to be proclaimed as Sovereign, but saving the rights of any issue of his Majesty King William the Fourth, which may be born of his late Majesty's

Consort. And by the 3d section it is enacted, that if at the death of his Majesty, there shall not be any child living, and a child shall afterwards be born, her Majesty shall be the guardian during its minority, and shall exercise the regal power and government of the kingdom. And by sec. 4 it is enacted, that the Privy Council shall cause such child to be proclaimed as successor to the Crown; and by sec. 5, that in case of the birth of such child, the Houses of Parliament shall meet, and the laws regarding the same on the demise of the Crown shall apply. The other sections relate chiefly to the powers of the Regent.

It appears to us, therefore, that there is no necessity for any declaratory law on the point, as, independent of authority, the case is provided for by the act to which we have referred.

#### REPRINTS OF THE OLD REPORTERS.

OF the series of reprints of the old Law Reports now in course of publication, seven parts have appeared, namely: Lord Raymond's Reports, edited by Mr. Gale; H. Blackstone, by Mr. Meymott; and Shower's Reports, by Mr. Butt.<sup>a</sup> We have noticed some of them at p. 309, vol. 4, and p. 119, *ante*, and shall probably advert to the other numbers at a convenient opportunity. For the present, our attention has been attracted by a chronological statement of the printed Law Reports from the earliest times, and of the contemporary manuscripts, by which many of them may be either authenticated or improved. The first printed report bears date on the 19th October 1216, in the reign of Henry 3; and the statement points out the several libraries in which the manuscripts are to be found; viz. at Lincoln's Inn, the Inner and Middle Temple, the British Museum, the Public Library, Cambridge, and the Bodleian Library, Oxford. The manuscripts at all these libraries are very numerous, and particularly in the Lansdowne, Harleian, and Hargrave collections, at the British Museum.

The following passages from the first report made by a Select Committee of the House of Commons in the year 1800, relating to the Year Books and Judicial Proceedings in early times, will show the importance of these manuscripts:

\* 1 W. 4, c. 2.

<sup>a</sup> Published by R. Phency.

"The judicial proceedings of the earliest date are those of the Curia Regis, commencing in the reign of Richard I; the Placita Forestæ, and the Courts of King's Bench and Common Pleas, beginning from the reign of Edward the First.

"Some of the most curious and instructive records of the Curia Regis have been already published by Maddox, in his Notes to his History of the Exchequer; others of them are probably contained in the abstracts and transcripts preserved at the Chapter House, and in the Libraries of some of the Inns of Court; and, with regard to the rest, it is very doubtful whether they are sufficiently perfect for publication.

"Of the Placita Forestæ, which are dispersed in so many different repositories, it might be useful to print one General Catalogue.

"The Special Judgments of the Common Law Courts, in the reign of Edward the First, are highly commended by Lord Hale, who says (Hale's History of the Common Law, cap. 7), 'that the reasons of the law, upon which the Court proceeded, is many times expressly delivered upon the record itself.' And the value which he set upon them, appears by the large selections and copies from them which he obtained and bequeathed, with his other MSS., to the society of Lincoln's Inn.

"It may be desirable, therefore, that his Selections should be printed, and that such other selections should be made as were suggested by the Keeper of the Chapter House Records in 1732, or that the abstract now preserved in the Chapter House, and specified by the present officer in his return upon this subject, or the Book mentioned in the return from the society of the Middle Temple, should be printed, accordingly as it may appear, upon a careful inspection and comparison of them all, that any of the latter compilations can be substituted for Lord Hale's, if his cannot be obtained for the public, or perhaps be made supplementary to it, if they should appear to take in a larger compass of time.

"As these records would be particularly serviceable in illustrating the Year Books,—a subject discussed with great erudition and ability in a return made from the society of Lincoln's Inn,—your Committee strongly recommend that the series of those books, from Edward the First to Henry the Eighth, should be completed, by printing those hitherto unpublished, of which there are several extant in the libraries of Lincoln's Inn, the Inner Temple, and the British Museum, and also by reprinting the rest from more correct copies, as those which are already in print are known to be, in many instances, incorrect and erroneous. A general index to the whole would be a very necessary addition to such a work, which forms so valuable a monument of our practical jurisprudence in its earliest ages."

From the Society of Lincoln's Inn a return was made, which contains the following statement relating to the Year Books.

"Reports of Judicial Proceedings, viz. first, Year Books, sometimes called *Relationes, Annales, Narrationes, Anni*, and *Tempora*. Of these there are many volumes, a few of them being duplicates. They also are, for the most part, fairly written, and in the hands of the respective periods to which they relate, and which periods are

REIGNS.	YEARS.
Edward 1. —	17, 18, 19, 30, 31 and 32.
— 2. —	1 to 20.
— 3. —	1 to 46.
Richard 2. —	2, 6, 7, 8, 11, 12, 13.
Henry 4. —	2, 8, 11, 13.
— 5. —	1, 5, 9.
— 6. —	1, 2, 3.
Edward 4. —	10.

"2.—Reports not official, in the reigns of Eliz., Jac. I, and Car. I.

"1. Year Books. Whatever may have been the nature of the authority under which those books were compiled, and whatever the particular description of the compilers, (concerning which there seems to be a considerable diversity of opinion) they are universally considered as containing official and authentic accounts of the arguments and decisions in the most important causes which came before the chief tribunals of this country, from a very early period down to the general introduction of printing. About which time certain eminent judges and lawyers, as Kellway, Moore, Benloe, Dyer, Plowden, &c. began, without any special appointment or duty, to make similar compilations, with a view of committing them to the press. Such a valuable monument of practical law and jurisprudence as the Year Books, probably does not exist in any other country. But

"1. In the printed editions of these important annals there are many chasms and interruptions in the series of years.

"2. The printed copies abound with many imperfections of other sorts. The cases, arguments, and judgments are not so fully stated in them as they are to be met with in some of the manuscripts, because those editions were (so it should seem) made from other manuscripts less complete, the editors not having had the means, or industry at least, of resorting to those which were more full and accurate.

"3. They are printed so close, so many of the manuscript abbreviations are retained, and there is so little separation in paragraphs, or distinction between what is said by the counsel and what is said by the judges, that it often requires the experience and sagacity of a legal antiquary, and generally much more time than the practising lawyer can bestow to read, or rather to decipher the passages to which there is occasion to refer.

"4. There is no general well-digested index to them.

"1. Of the chasms.—Those are extant, in manuscript, in this and other repositories. Year Books from Edward I. inclusive to the 1st of Henry 8; but of the series of years, in that long space of time, these are wanting in the printed editions.

"The whole of the reign of Edward I., except the short memoranda in *Saccario* prefixed, to what now forms the first printed volume.

"The reign of Edward 3, anno 11 to 16, anno 19, 20, and 31 to 37.

"The whole of Richard 2.

"Of Henry 5, anno 3, 4, 6.

"Of Henry 7, anno 17, 18, 19.

"This statement omits the 5, 6, 13, 15, 16, 17, Henry 6, which are likewise wanting in the printed editions.

"A variety of reasons concur to render it probable, that if not the whole, a considerable part of these deficiencies, might be supplied from existing manuscripts."

The recommendation of the Committee of the House of Commons, as to printing the unpublished manuscripts, may possibly meet with some hindrance from the restriction contained in Lord Hale's will. The passage is as follows:

"As a testimony of my honour and respect to the society of Lincoln's Inn, where I had the greatest part of my education, I give and bequeath to that honourable society the several manuscript books contained in a schedule annexed to my will. They are a treasure worth the having and keeping, which I have been near forty years in gathering, with very great industry and expense. My desire is, that they be kept safe and altogether, in remembrance of me. They were fit to be bound in leather, and chained and kept in archives. *I desire that they may not be lent out or disposed of.* Only, if I happen hereafter to have any of my posterity of that society, that desires to transcribe any book, and gives very good security to restore it again within a prefixed time, such as the benchers of that society in council shall approve of, then and not otherwise, only one book at one time may be lent out to them by the society. They are a treasure not fit for every man's view, nor is every man capable of making use of them, only—*I would have nothing of these books printed*, but entirely preserved together, for the use of the industrious, learned members of that worthy society."

On this Mr. Douglas, the reporter, observes,

"I have judged it right to set forth specially all that could be stated with authenticity, relative to this departure, under the direction and authority of the House of Lords, from the words of Lord Hale's will, as when we consider the eminent persons then living, who were benchers, or had been members of the society, it will not be doubted but that they must have given due consideration to the subject, and must have thought that they were either bound to a compliance with the orders of that house and its sub-committee, or, at least, fully justified in their compliance. Their conduct on that occasion may, therefore, perhaps be considered as having formed a rule and precedent for a like compliance with any similar order of either house of Parliament. Indeed it can hardly be supposed that Sir Matthew Hale himself would

have wished to oppose his own desire of withholding his manuscripts from the public to such high authority. Although a sense of the value of his gift to the society, and an anxiety for its preservation, may seem to have led him in making his will, into a way of thinking on the subject inconsistent with his general love of his profession, and that zeal for extending to the country at large the benefit of his great learning, which he so fully manifested by the valuable works he himself either published or prepared for the press."

The following remarks and extracts are also made by the compiler of the Chronological Statement:

"The return of the benchers of the *Inner Temple* contains an important MS. of a Year Book, temp. Edw. 3, extending from the 10th to the 16th of his reign.

"The return of records deposited in the *Chapter House*, made by Sir George Rose, lays open a valuable source for the correction of a portion of the Year Books by official MSS. The following extract will be read with interest.

"It will probably be difficult to decide now, when the proceedings of the *Curia Regis* finished, and the Courts of King's Bench and Common Pleas first sat as distinct Courts. In the old calendars, the Rolls are called of the *Curia Regis* to the end of Henry 3, and from 1 Edw. 1., of the King's Bench and Common Pleas; but nothing I have seen appears to justify that. On the contrary, I find, in King John's reign, mixed titles in the rolls. A few rolls, of the reign of Henry 3, are said to be in the Tower.

"Not being able to decide when the Court was divided, I state as has been formerly done, that the Rolls of the King's Bench in this Treasury are from 1 Edw. 1 to the end of Henry 5; and the Rolls of the Common Pleas, from the beginning of Edward 1 to the end of Henry 7<sup>b</sup>, except those of a few terms in the latter reign, which are in the Treasury of the Common Pleas."

"The returns made by the *British Museum* under this Commission are very incomplete, since the catalogues which now give access to the invaluable and very extensive stores of MSS. in that institution were not then in existence, and may be said to have emanated from that Commission. The catalogue of the Harleian Collection is a great work, and its indexes have, in the course of the present inquiry, been found strictly correct and complete. The catalogue of the Lansdowne Collection describes the several contents with sufficient accuracy, but its index is so grossly defective that the Compiler found great difficulty in giving an accurate statement of the objects of

<sup>b</sup> "Sir Matthew Hale says, 'that in the time of King John, the Courts of King's Bench and Common Pleas were distinct Courts, but states mixed proceedings on the Rolls.'—Hale's Com. Law, 149, 151."

legal research with which that collection is enriched. No pains were spared, and it is hoped that little, if any thing worth noticing, has escaped his observation. Since the date of the Commission above alluded to, the valuable and extensive Manuscript Collection of Mr. Hargrave has been added to the Museum.

"The MSS. in the table under the following title 'Bishop Moris's MSS., Public Library, Cambridge,' are not mentioned in the return made by that University, which leads to a doubt whether the description of this collection, given in the table, is a correct one. The catalogue of the collection, of which these MSS. is a portion, will be found in a volume in the British Museum, entitled 'Catalogi Librorum Manuscriptorum Angliæ et Hiberniæ,' and against the title of it is this note, in writing:—'Now in the Public Library at Cambridge.' Not having had an opportunity of ascertaining this fact, and not doubting but that these MSS. are in existence, if not at Cambridge, elsewhere, we have included them (imperfectly described as they are, without any guide as to what portion of the several reigns they include) in our table, with this brief explanation, and we shall take an early opportunity of looking into and describing them accurately. Independent of the value of these MSS., with a view to the collations of the printed Year Books, which, from what we have seen, is likely to prove of the first importance in authenticating them, there are the following in this collection, which are doubly important as not being in print, and no perfect copies elsewhere apparently to be found.—No. 402. A Year Book in the reign of Edw. 1. may be more at large than the short notes of that reign contained in the volume in the Middle Temple Library, and may complete the reign of Edw. 1. of Lord Hale's MS., the printing of which has been recommended by the Record Commission; and this is the more probable from the following statement, extracted from the Lincoln's Inn returns, before mentioned.—"As to the reign of Edw. 1, it is clear from Fitzherbert's Abridgment, that there were extant in his time, Year Books of that period; and Sir M. Hale, in his History of the Common Law, mentions 'that some of those, though broken, yet the best of their kind, were in Lincoln's Inn Library.' (Cap. 8, p. 186.) Likewise those in the reign of Richard 2, Henry 5, and Henry 6. There is likewise another Year Book, not included in the table for want of date; it is thus described in the catalogue—"No. 399. An ancient Year Book, bound in vellum, fol."

"It is presumed that from among the various MSS. enumerated, the reign of Edw. 1 may be added, for the first time, to the printed Year Books; the various years now omitted in the reigns of Edw. 3, Richard 2, Henry 5, 6, 7, and 8, supplied, and that the Hargrave and Harleian collection will furnish an additional volume, including the reigns of Edw. 6, and Philip and Mary.

"The detached collections of Reports, by eminent practitioners, after the Year Books ceased to be continued, are very numerous, and

most of them of the first authority and consequence; others of less authority derive their value from their forming so many links in the series which would otherwise be incomplete. The notes appended to the various MSS. in the table, which are for the most part to be found in the hand-writing of their former possessors, or have been since written upon examination of their contents, will show the improvements which many published Reports are capable of receiving from these invaluable sources; and there are doubtless many more MSS. appearing in the table without note or observation, which will be found, upon examination, of no less value."

The statement of these Manuscript Collections, it appears, has been compiled to assist the Editors in their task of collating the new edition of the Reports; and certainly, if they continue to avail themselves of these means of correcting and improving the old editions, they will render great service to the Profession, and perfect a body of Law which is unrivalled in the history of Jurisprudence.

## PROFESSIONAL MEETINGS.

### INCORPORATED LAW SOCIETY.

The Anniversary Dinner of this Society took place on Thursday, the 12th instant, at the Society's Hall in Chancery Lane, when Mr. Freshfield, M. P., presided. There were about 170 persons present, amongst whom we observed a more than usual proportion of the senior members of the Society.

The *Chairman*, in brief and appropriate terms, proposed the health of his Majesty, to whom the society was indebted for its charter of incorporation: "the Queen and the rest of the Royal Family" were also proposed. Then followed the healths of the Judges of the respective Courts of Equity, Common Law, Admiralty, and Ecclesiastical. "The Attorney and Solicitor General, and the other members of the bar" were next given.

In proposing "Prosperity to the Law Society of the United Kingdom," the *Chairman*, amongst other remarks said, that its success would principally depend on the conduct of its own members; that in proportion as they sustained their reputation for honor and intelligence, and in proportion as they discountenanced every species of mal-practice, the society would take its rank amongst the institutions of the country; and in its collective character, would doubtless aid the profession in every proper and legitimate object.

"The Lecturers of the Society" were next noticed; and the *Chairman* dwelt strongly on the valuable instruction which the junior members of the profession derived from the researches of the learned gentlemen who favored the society by lecturing in that Hall. He



suggested also, that the continued attendance of the members in general, would give additional encouragement to this important part of the objects of the Institution.

The health of the Chairman was proposed by Mr. Tooke, M. P., who, amongst other things said, that there was an abundant tract of professional ground, in which he hoped to be enabled actively and zealously to co-operate with his hon. friend, by promoting with him all measures in aid of the objects of this Institution, and for improving the administration and practice of the Law.

The health of Mr. Frere, the Deputy Chairman, was proposed by Mr. Foss; the Committee of Management by Mr. B. Brooks, and the Club Committee by Mr. D. J. Lee.

Mr. W. Loece returned thanks for the Committee of Management, and expressed the great satisfaction which he experienced in common with the other senior members of the profession, in the opportunity which this Society afforded, of rendering service to their brethren,—a duty which they should ever cordially perform.

Mr. R. B. Follett, on behalf of the Club Committee, particularly adverted to the advantage which resulted in the conduct of professional business, by the personal knowledge which the members of the Society acquired of each other, through the medium of the social meetings in the Law Society Club.

In proposing the donors to the library, Mr. Bigg enlarged on the importance of that department of the Institution, to which 4000 volumes had been contributed, and for a large part of which the society was indebted to some of the learned Judges, to several of the King's counsel, and to a considerable part of the bar. After noticing the liberal contributions of many members of the society, he urged, that the example should be followed by those members who had not already sent their donations.

Mr. Holme expressed the acknowledgments of the donors, and especially pointed out to the members, the desirableness of increasing the collection of County Histories and topographical works. The legal part of the library, he said, was now, or would soon be, tolerably complete.

The Chairman concluded with proposing the health of Mr. Maugham, the secretary, and noticed his services since the foundation of the society. The Secretary, after expressing his grateful acknowledgments, observed, that it was now exactly 600 years since attorneys at law, by the Statute of Merton in 1235, were authorized to appear for suitors. It was evident, that prior to that time, they were an existing class of legal practitioners; and it was remarkable, that the first report of a case in one of the superior courts, was decided only a few years previously. He hoped that through the means of this society, the profession at large would become, without exception, as honorable as it was ancient. He had the pleasure to say, that the number of members now exceeded one thousand, being an increase of upwards of two hundred since the Institution opened in 1832.

## ON THE LAW RELATING TO CERTIFICATED CONVEYANCERS.

Sir,

In writing upon this interesting subject, it is not so much my purpose to argue the important question it involves, as to remark upon the materials furnished by you (p. 279) for discussion, in the hope that some more able correspondent may favour us with an opinion. I must take the question to be as you have stated it, viz. "Whether certificated conveyancers, besides being entitled to fees for drawing deeds and instruments, and advising on the law and practice of conveyancing, can also charge for attendances and correspondence, and for engrossing and attesting deeds like a solicitor?" Now such a case as this does not come within the 11th section of 22 G. 2, c. 46, which relates only to an unqualified person practising through the agency and connivance of an attorney or solicitor. Neither do I think the subject receives more light from 2 G. 2, c. 23,—made perpetual by 30 G. 2, c. 19, s. 75; for sec. 24 of the former act appears to relate exclusively to proceedings in the Courts of Law and Equity.

Then let us consider the effect of the stamp acts in reference to your point, whether certificated conveyancers are allowed not only to charge for drawing, but also for ingrossing and copying. It certainly does not strike me, as it appears to have struck you, that from the statement of the exemptions alluded to by you in the schedule to the 44 G. 3, c. 98, that the certificated conveyancers who charge for drawing are thereby excluded from making a charge for engrossing, &c. So far from preventing the person who draws from ingrossing or copying, unless he be an attorney, *that portion of the act merely exempts from payment of the duty such persons as do not draw, but are engaged in engrossing or copying only*; and it seems clear that these exemption clauses were introduced, not to define the limits and nature of a certificated conveyancer's business, and by that means exclude him from any other employment, but for the purpose of taking a certain class of persons out of the operation of the clause imposing the duty, who would otherwise have been considered chargeable therewith. But the conveyancer is not of that class. The 14th sec. of the 44 G. 3, c. 98, enacts, "that every person who shall, for or in expectation of any fee, gain, or reward, directly or indirectly, draw or prepare any conveyance of, or deed relating to, any real or personal estate, or any proceedings in law or equity, other than and except serjeants at law, barristers, solicitors, attorneys, notaries, proctors, agents, or procurators having obtained regular certificates, and special pleaders, draftsmen in equity, and conveyancers, being members of one of the four Inns of Court, and having taken out the certificates mentioned in the schedule to that act annexed, and other than and except persons solely employed to engross any deed, instrument, or other proceedings, not drawn or prepared by themselves, and

for their own account respectively; and other than and except public officers drawing or preparing official instruments, applicable to their respective offices, and in the course of their duty, shall forfeit and pay for every such offence the sum of 50*l*." It may, I think, be fairly argued from the above sec. that the exception in favour of persons engaged in ingrossing, &c. was introduced, because the previous word "prepare" would otherwise have included ingrossing; and the effect of the exception is not to narrow the meaning of this word, but to exempt a certain class from its operation. This word may be said in one case to have a confined, in another a more extended signification. In the former instance it would be synonymous with "draw"; in the latter it would extend to ingrossing, &c.; and when put in opposition to "ingross," it is used in its confined sense; but whatever its meaning in the Stamp Act, the certificated conveyancer is not affected by it. Even if we suppose, for the sake of argument, that a conveyancer's business is not to complete a conveyance, is that portion of it which does not come within his business of such a nature that he cannot charge for its performance? The general rule of law is, that every man who devotes his labour, or his talents, or his time, to the service of another, shall be entitled to a recompense; and I am aware of no restraint by statute as to the persons to be employed in ingrossing and copying, and of no law which says that a certificated conveyancer, as such, shall be debarred from following this employment. The law stationer can charge for his trouble, and why should not the conveyancer be able to do so for similar work and trouble? But the material question appears to be this: Can the certificated conveyancer, on account of such work and labour, make the same charges in amount as the attorney? or has the latter, on account of his profession, a privilege of charging more than the former?

In discussing this point, it must be conceded that the law stationer's charges are less than the attorney's; but how differently are they situated? The former, in order to get employment, is obliged to submit to a less charge, and can often afford to do so from the extent of his business; whereas the attorney, who has his ingrossing done in his own office, is generally obliged to keep a clerk, whom he seldom pays according to the quantity of work done, which makes the attorney liable to suffer if business fluctuates. The attorney, too, has not attained to his profession without considerable expense, and is under responsibility to his client for the due performance of the business entrusted to him. He is allowed to make a fixed charge for ingrossing, which the Courts allow. We must therefore take it for granted that it is a just and reasonable charge. If just as respects the attorney, why should it be otherwise with reference to the certificated conveyancer? He, too, has not attained to his profession without considerable expense, and is also responsible to his client for the due performance of the business entrusted to him.

Besides, we are considering a case, where he deals directly with his client, and not with the attorney, as the law stationer does. As between the law stationer and the attorney, the charge of the former is matter of previous settlement; but as between the client and certificated conveyancer, such is not the case.

Under these circumstances, I cannot imagine why the charge of both certificated conveyancer and attorney should not be guided by the same rules, in the absence of any agreement to the contrary, unless the latter claims some privilege of his profession; for I am pretty confident the former, by ingrossing or copying, or corresponding, or attending to give advice on the subject of conveyancing, does not interfere with a business *exclusively* that of an attorney or solicitor. *Poucher v. Norman*, 1 B. & C. 270, decides that a conveyancer may recover for his fees; and Mr. Justice Holroyd says, "he has the same ground of action which the law gives to every man (with the exceptions already pointed out) who performs a service for another. Persons practising in the *subordinate degrees*, even of the excepted professions, may recover for their services. Surgeons may recover for skill and attendance, and attorneys for conveyancing. There is therefore nothing to place a certificated conveyancer, not at the bar, in a different situation from an attorney practising as a conveyancer, or to take him out of the general rule both of law and justice, that every man should be entitled to recover a recompense for the devotion of his labour for the benefit of another."—The case of *Crammond v. Crouch*, 3 Car. & P. 77, decides nothing more than this: *viz.* that if a conveyancer represents himself as an attorney or solicitor in a business requiring the aid of an attorney or solicitor, as in bankruptcy business (which almost exclusively belongs to men of the latter profession) the conveyancer shall not recover his fees; and the items of the account in that case were remarked upon by Lord Tenterden, as furnishing additional evidence of such misrepresentation, and for no other purpose—certainly not to shew that where a conveyancer is allowed to make a charge in that character, as for ingrossing, &c., the same should not be equal in amount to the attorney's. The above remarks will apply in some respects to charges for attendance and correspondence in conveyancing business. And as to the amount of the charge, I would ask, is not a conveyancer's correspondence as serviceable, and his time as valuable to the client, as the attorney's? The special pleader is somewhat differently situated from the conveyancer, for the business of the former has relation to proceedings in the Courts, which makes all the difference.

E. P.

Macclesfield, Feb. 11, 1835.

\* Barristers and physicians.

COUNTRY COMMISSIONERS OF  
BANKRUPTCY.*To the Editor of the Legal Observer.*

Sir.

I HAVE been much amused by reading an article in the *Legal Observer* of the 14th Feb., under the title of "Defence of Country Commissioners in Bankruptcy," addressed to you by one of the *Sheffield List of Commissioners*. That gentleman might have saved himself great trouble, and apparently great soreness, had he considered calmly for one moment my observations. He would then have discovered that *I made no attack on the Commissioners* at all, and did not utter one word of complaint upon their conduct. They are highly respectable and business-like men, as I well know; and therefore I could not intend any reflection upon them. It is the *system of selection* of which I complained, as being contrary to every just principle towards the profession at large, and the *smallness in number of the commissioners* to do the business in bankruptcy at *so little an expense to the estate* and parties as it could and ought to be done at, if a *sufficient number of Commissioners* had been appointed. It is beneath me as a gentleman to notice the sneer of "the Commissioner," that the difference in profit between the old and new system "is really why all this fault is found by your correspondent," except that really this Country Commissioner might have seen that such an observation cannot justly apply to a *London solicitor*, who cannot by possibility profit by the working of a *country commission*, whether at Sheffield or Huddersfield.

The Commissioner admits the whole of my case. *He travelled himself fifty miles*, and no doubt was paid for it, or he would have complained; and supposing all the other parties to have travelled as much, I think it will be found that the expenses of the travelling alone make the balance in favour of what I contend for, — namely, that at least there ought to be a *sufficient number of Commissioners* named, to avoid this *great loss of time and expense*. The Commissioner, being one of the elect, is of course bound to support the *system*, but which he must know is generally condemned.

W. F.

[Our present correspondent has subscribed his name to this letter; but it being our wish to prevent all personal controversies in these pages, we have given his initials only. Our business is with the profession at large, and its grievances. The article to which the Sheffield Commissioner replied was not a direct communication, but an extract from a pamphlet, from which, as it related to the system lately established of appointing Country Commissioners (of which we had heard many complaints),

we deemed it our duty to make some extracts.] We thought that the writer of the pamphlet made out a strong case against the practice adopted by the late Lord Chancellor. The learned Commissioner defended himself and his brethren on the Sheffield List, and we could not refuse inserting his statement. It appears, however, that *the general question yet remains to be settled*, and on this we shall be glad to receive further information from different parts of the country, in order that all the details of the complaint may be collected and brought to the notice of the present Lord Chancellor.]

## SUPERIOR COURTS.

*Lord Chancellor's Court.*FRAUD.—CONSTRUCTIVE NOTICE.—  
SOLICITOR.

*A solicitor having by fraud obtained an assignment of a mortgage from his client, without paying the consideration, borrows money from a third party on the security of the property comprised in the assigned mortgage: Held, that as the circumstances of the transaction would, to a prudent lender, convey notice of the fraud, he, although innocent of the fraud, must be postponed to the first mortgagee whose lien subsisted.*

This was an appeal from the *Master of the Rolls*. The plaintiff is an aged lady living at Ipswich, and in the year 1826 she employed an attorney, named Bostock, to draw her will. In consequence of being so employed, Bostock, discovering that she had 9000*l.* in the 3 per cent. consols, shortly afterwards proposed to her to increase her income, by authorizing him to lend this money on mortgage, at an interest of 5 per cent. This change was to make an addition of 180*l.* a-year to her income; and seduced by the brightness of his promise, and his assurances of the validity of the security, she gave him a power of attorney to sell out the stock and dispose of it according to the plan proposed. The money, as he represented, was advanced on mortgage, in two sums of 6000*l.* and 3000*l.* No inquiries were made by her into the securities, and the interest was regularly paid until the year 1829, when some delay took place, and the plaintiff directed Bostock to take measures for calling in her principal. It then appeared that the 3000*l.* had been lent to a person named White, who was engaged in a building speculation on some land belonging to Bostock, at Kennington. A few days after this desire of Mrs. Kennedy to call in her principal, Bostock proceeded to Ipswich with a deed of assignment ready, by which Mrs. Kennedy agreed to assign this mortgage to him, on receiving 3042*l.*

principal and interest. This deed Mrs. Kennedy signed in the presence of witnesses, and she also, as it was alleged, in ignorance of the consequence, wrote her name on the back of the deed in the presence of the same witnesses. Above this signature Bostock, on his return to London, wrote, or procured to be written, a receipt for the payment of the mortgage money, and having previously become possessed of all the interest which White had in the property, he was then provided with a clear title to the estate at Kennington, and shortly afterwards prevailed on his father-in-law, Mr. Kirby, to lend him the sum of 2000*l.* on it by way of mortgage. Bostock never paid the plaintiff the 3042*l.*, but soon absconded, and was made a bankrupt. The plaintiff, on discovering the fraud practised on her, filed a bill for the purpose of obtaining a preference over Kirby in the payment of her mortgage, which she contended to be still in force, as the signature to the payment of money on the assignment had been obtained by fraud. The question was argued before the *Master of the Rolls*, who declared that the defendant Kirby, although perfectly innocent of all connection with the frauds of Bostock, must be held, on the circumstances of the case, to have had notice of the defect in the deed of assignment, and that the plaintiff must therefore be declared to have a priority of claim. The appeal was against the whole decree.

The *Solicitor General*, Sir William Horne, and Mr. *Girdlestone*, in support of this decree, argued principally in favour of the position that the defendant had constructive notice of the fraud that had been practised. According to his own answer, he had such an opinion of his own capacity to judge of the validity of a title that he employed no solicitor, but relied on the representations of Bostock, and his own examination of the papers. The deed of assignment was worded so strangely; the receipt on the back for the payment of the money had so much of a suspicious appearance, being written in a different hand from that used in the body of the deed, and the signature being in a division of the paper below the receipt; and from the general nature of the deed, there was not a solicitor in London who would have ventured to advance a shilling on it without further inquiry. As the defendant had been content to take his own judgment, he must suffer for not availing himself of those notices of fraud which were apparent on the face of the document.

Sir Edward Sugden and Mr. Wigram, in support of the appeal, contended, that there had been no fraud committed on the plaintiff, and that if there had been a fraud, still the plaintiff was not entitled to make the innocent defendant suffer for her misplaced confidence and gross negligence. The plaintiff knew that she was signing a receipt, she knew the contents of the whole document, and the effect of it. She trusted Bostock's promises to pay, but on his failing to perform his promise, she then turned round on the defendant, who had *bona fide* advanced his money on the security

of the agreement. If the plaintiff had been deceived, she had been deceived by her own confidential solicitor; and it would be a monstrous stretch of the principle of a Court of Equity, to say that a defendant who openly and innocently advanced his money on an apparently valid security, was to be made a sufferer for the negligence and misplaced confidence of another in the solicitor with whom he transacted business.

Lord Chancellor Brougham, on the last day of his sitting in Court, affirmed the decree; but as no blame was to be imputed to the defendant, and the whole fault lay on the plaintiff herself, for placing too much confidence in Mr. Bostock, her own attorney, for that reason his Lordship reversed so much of the judgment in the Court below as gave costs of the suit to the plaintiff.

*Kennedy v. Kirby and Green*, at Westminster, Nov. 19th, 20th, & 21st, 1834.

### Vice Chancellor's Court.

#### CODICIL.—EXECUTION OF A POWER.

*Held*, that a codicil confirming a will was a good execution of a power of appointment created between the times of making the will and codicil.

The bill was filed for specific performance of a contract for the purchase of an advowson, and the question as to the validity of the title came before the Court upon exceptions to the Master's report. It appeared, that by a settlement executed in 1774, upon the marriage of a lady of the name of Wilkinson, a power of appointment over the advowson and other real estates was secured to her, with an ultimate remainder in fee to herself. She became a widow in the year following, and then made her will, whereby she devised the estates over which she had the power, and all her other real estate, to trustees in fee, upon certain trusts. She soon afterwards contracted a new marriage, and thereupon the same estates were again settled, and a new power of appointment over them secured to her. She soon afterwards made a codicil, by which she changed one of the executors in her will, and confirmed the same in every other particular. The Master reported that the power was well executed.

In support of the exception it was argued, that the first power was destroyed by the second settlement, and that the second power was not executed by the codicil. The cases cited on both sides are referred to in Sir Edward Sugden's *Treatise on Powers*.

His Honor the Vice Chancellor was of opinion that the codicil was a good execution of the second power in the persons named in the will, which it republished and confirmed.

*Griffin v. Richards*, M. T. 1834.

## King's Bench Practice Court.

## MANDAMUS.—NOTICE OF APPEAL.—WAIVER.

*Where respondents have received regular notice of appeal for one session, and have been parties to an adjournment of it, they cannot afterwards object to not receiving a strictly regular notice of appeal.*

This was an application for a *mandamus* to be directed to the Justices of Gloucestershire, requiring them to hear an appeal against an order of removal. It appeared that the order was made in March 1834, and notice given for the ensuing Easter sessions. The appellants, however, applied for and obtained an adjournment, on the ground of the illness of one of their material witnesses. Before the adjournment was made the respondent's counsel was heard, and it was made on condition of the payment of costs. A notice was then given for the July sessions, which, it was contended, was, by the rules of the sessions, two days too late. It was ordered by the rules alluded to, that notice of appeal should be delivered on or before Tuesday in the week previous to the sessions. The same rule also applied to repited appeals. The production of the pauper at the trial was also required. The appellants applied a second time for an adjournment, stating, as a ground for such application, the severe illness of the pauper. The respondents then objected to the appellants being heard, on the grounds of the nonproduction of the pauper and the shortness of the notice. The sessions confirmed the order, on the ground that the notice was insufficient according to their rules.

It was contended in support of the rule, that as a regular notice of appeal had been given, and an adjournment, with the knowledge of the respondents, and to which they were parties, it was too late at the second sessions to object to the insufficiency of the notice, and therefore the *mandamus* must go.

On shewing cause against the rule, it was submitted, that as a regular notice had not been given for the second sessions, at which the trial was to take place, the justices were not bound to hear the appeal. The justices were therefore right in refusing to hear it.

*Cur. adv. vult.*

*Littledale, J.*, after taking time to consider, gave it as his opinion that the notice was sufficient, and therefore directed a *mandamus* to go.

Rule absolute. — *Rea v. The Justices of Gloucestershire*, H. T. 1835. K. B. P. C.

## NOTICE OF APPEAL.—ADJOURNMENT.—ORDER OF REMOVAL.

*Where there has been one adjournment of an appeal at the first sessions after the order of removal has been executed pursuant to the statute, the justices have a discretion as to whether they will adjourn at a second session.*

In this case an order of removal had been

executed, and an appeal entered against it at the June sessions following. That was respited in the ordinary way, and for the October sessions notice of appeal was given to the respondents. This notice was too late, according to the practice of the sessions. When the appeal was called on the respondents objected to the irregularity of the notice. The appellants then moved to adjourn the appeal. The adjournment was opposed by the respondents, and the Bench, by a majority of one, ultimately refused to adjourn the appeal. An application was then made to this Court for a *mandamus* to be directed to the justices, requiring them to enter continuances and hear the appeal, on the ground that the practice of the sessions was unreasonable, and therefore that the Court ought to interfere by the exercise of its visitatorial power; and compel the justices to hear the appeal.

On shewing cause against this rule, it was contended, that as there had been one adjournment of the appeal in this case by force of the statute 9 G. 1, the obligatory provisions of that act had been complied with. That act only applied to the first sessions after executing the order of removal, and therefore at the second it was for the justices to say, in the exercise of their discretion, whether they would adjourn the appeal or not. That discretion they had exercised by refusing to adjourn the appeal, and now the Court had no power to interfere. As to the unreasonableness of the practice of which complaint had been made, it did not appear that any such existed. The sessions required that fourteen days' notice of appeal should be given in cases of respited appeals, and eight days' notice in case of ordinary appeals. There was good reason why longer notice of appeal should be required in case of a respited appeal than in that of an ordinary appeal; for it might be expected that at the sessions next after executing the order, an appeal should be entered; but after sleeping so long upon their rights it would not be expected that the appellants should appeal; and therefore a longer notice would of course be required.

*Cur. adv. vult.*

*Patteson, J.*, after taking time to consider, was of opinion that the statute did not apply to this case, and therefore the sessions were not compelled to adjourn. That being so they might decide according to the rules of the sessions. In those rules there appeared to be nothing unreasonable, and therefore the Court could not interfere. The present rule must therefore be discharged.

Rule discharged, without costs. — *Rea v. The Justices of Monmouthshire*, H. T. 1835. K. B. P. C.

## COSTS.—WRIT OF TRIAL.—TAXATION.—ARBITRATOR.—CERTIFICATE.

*It is not necessary that a Judge should hear the whole of a cause through in order to*

entitle him to certify pursuant to the directions of H. T. 4 W. 4.

This was an application to review the Master's taxation. A verdict had been entered in favour of the plaintiff for a sum less than 20*l.*, and the question was whether, under the circumstances of the case, the Master ought to have taxed the plaintiff his costs according to the ordinary scale, or according to the reduced one provided in the directions to taxing officers promulgated in Hilary term, 4 W. 4. The cause had been brought on for trial at the Warwick assizes, when after it had proceeded some way it was referred. A verdict was taken, subject to the certificate of the arbitrator as to the amount for which it should ultimately be entered. After hearing the case he gave a certificate for 2*l.* and some odd shillings. An application was then made to the Judge before whom the cause had come on to be tried, for a certificate as to the propriety of trying the case before the superior Court. He communicated with the arbitrator, and ultimately gave his certificate that the cause was a proper one to be tried before him. The question was, whether the certificate so given was valid, the cause not having been entirely heard before the Judge. The Master taxed the plaintiff his full costs, according to the usual scale. A rule  *nisi* having been obtained to set aside this taxation—

Cause was shewn against it. It was contended, that it was not necessary for the Judge to hear the whole cause through, in order to enable him to decide whether it was proper for the trial to take place before him.

In support of the rule, it was submitted, that unless the Judge had heard the whole cause he was not in a situation to determine the question, and within the terms of the rule had no such power.

*Curr. adv. vult.*

Patterson, J., after taking time to consider, was of opinion that the words of the rule applied not merely to cases where the cause had been fully tried by the Judge, but also to cases where the cause had merely been brought on to be tried. The Master therefore was right in his taxation.

Rule discharged.—*Burchell v. Clark*, H. T. 1835. K. B. P. C.

EXAMINING FOREIGN WITNESSES.—COMMISSION.—STAY OF PROCEEDINGS.

*It is not a general rule that a commission to examine witnesses on interrogatories should be a stay of proceedings.*

On obtaining a rule  *nisi* for a commission on the part of the defendant for examining foreign witnesses, it was suggested that, as a matter of course, the rule operated as an absolute stay of proceedings.

Patterson, J. observed, that it could not be an absolute stay, because, if it were so treated, a defendant might indefinitely delay a plaintiff in his remedy, by not executing the commis-

sion after he had obtained it. The rule must therefore only be for a stay of proceedings till a certain day.

Rule accordingly.—*Ward v. Grime*, H. T. 1835. K. B. P. C.

BAIL.—INFAMY OF CHARACTER.—SUFFICIENCY OF PROPERTY.

*Mere infamy of character is not a sufficient ground for rejecting bail.*

Bail was in this case opposed on the ground of his keeping a brothel.

Patterson, J., refused to reject him on that ground, as mere infamy of character was not a sufficient reason for rejecting bail. If his property were insufficient that would be another question.

On further examination it appeared that the bail had not sufficient property to entitle him to justify.

Bail rejected.—*Gouge's bail*, H. T. 1835. K. B. P. C.

ATTACHMENT.—ATTORNEY.—CLIENT.—MISBEHAVIOUR.—BANKRUPT.

*If an attorney obtains his certificate as a bankrupt he is still liable to an attachment for not investing money pursuant to his client's directions.*

This was an application for an attachment against an attorney, for not investing certain money pursuant to the directions of his client, and of a rule of court for that purpose. One difficulty in the case was, that the attorney had become bankrupt and obtained his certificate since the time at which the money ought to have been invested.

Patterson, J., thought that was of no consequence, as the investment of money pursuant to his client's directions was an act to be done, and not a debt incurred by him.

Rule granted.—*Ex parte Grant*, H. T. 1835. K. B. P. C.

ATTORNEY AND AGENT.—UNCERTIFICATED PERSON.—MALPRACTICE.

*Where it is sought to proceed against an uncertificated person for practising in the name of an attorney, under the 22 G. 2, c. 46, it must first be shown that the attorney was ignorant that the person who practised in his name was uncertificated, and then the Court will take judicial notice of such misconduct.*

This was an application under the 22 G. 2, c. 46, s. 11, to have committed to prison a person named Hodgson, for having, while uncertificated, practised in the name of an attorney of the Court. The statements made in the affidavits on which the motion was founded shewed clearly that Hodgson was off the roll, and had practised in the name of an attorney of the Court. There was nothing to shew, however, that the attorney in whose name he

had so practised was aware of his being off the roll.

*Patteson, J.*, thought that by the words of the section of the act in question, it must be shewn that the attorney was conscious of the person improperly practising being off the roll.

This application was afterwards renewed, when satisfactory evidence was given that the attorney was conscious of the person practising in his name being off the roll. It was not wished, however, on the part of the applicant, to take proceedings against the attorney.

*Patteson, J.* said, that as the misconduct of the attorney had been brought to the notice of the Court it must be noticed. The rule must therefore go against both parties, requiring them to shew cause why the penalties provided by the section in question should not be inflicted.

Rule accordingly.—*In re Hodgson, H. T. 1835. K. B. P. C.*

### Common Pleas.

PLEADING. — DEPARTURE. — BILL OF EXCHANGE. — HUSBAND AND WIFE. — ACCEPTOR.

*In an action on a bill of exchange against the acceptor by the holder, if the coverture of the drawer is pleaded, it may be shewn in the replication that the drawing and indorsing was by the husband's authority.*

Demurrer to a replication for a departure. It was an action brought by the indorsee of a bill of exchange against the acceptor. The plea was that the drawer was a married woman at the time of drawing and indorsing. Replication, that the indorsement was by the authority of her husband. Demurrer to the declaration, upon the ground of departure.

In support of the demurrer, it was contended, that there was no essential allegation in the declaration which the replication tended to support. Supposing that a married woman could indorse by authority of her husband, and that that could be a good ground of rendering the bill valid, still there was no allegation in the declaration which such an indorsement would go to support.

On the other side, it was contended, that the replication did go to support the allegations contained in the declaration. The plea alleged that the bill in point of law was not indorsed by the drawer mentioned in the declaration. The replication went to shew that it was so indorsed, and how it had become so, notwithstanding she was a married woman, namely, by the authority of her husband. True it was that there was no statement in the declaration with respect to the fact of the drawer being a married woman, because *prima facie* on the bill that would not appear. On the face of it the plaintiff had a right of action against the defendant as the acceptor of the bill of exchange, it having been indorsed by the drawer of that bill. The defendant then alleged something, the object of which was to shew that

notwithstanding there was an apparent right of action in the plaintiff, there was no real one. It was the plaintiff's duty then to do that which he had here done, namely, to shew that that which the defendant had pleaded could not avail to deprive him of his cause of action.

*Per Curiam.*—We think this was no departure. On the face of his declaration the plaintiff appears to have a right of action against the defendant. The latter, by his plea, seeks to shew by something not apparent on the face of the bill, that the person through whom the plaintiff derives his title to recover was incapable of giving one. The plaintiff then, by his replication, endeavours to shew that the attempt of the defendant to impugn his title ought not to succeed. That cannot be considered as a departure, and therefore the plaintiff will be entitled to judgment.

Judgment for the plaintiff.—*Prince v. Brunatt, H. T. 1835. C. P.*

### Exchequer of Pleas.

UNIFORMITY OF PROCESS ACT. — CAPIAS. — ATTORNEY'S RESIDENCE. — AFFIDAVIT TO HOLD TO BAIL.

*The Christian names of the attorney need not be introduced in the indorsement on a writ of capias.*

*In an affidavit of debt claiming interest, the contract for it need not be stated.*

This was an application to set aside a writ of capias, on the ground of irregularity. The irregularity complained of was an omission in the indorsement of the attorney's Christian names. The indorsement ran thus: "Milne, Parry, Milne, and Morris, agents for Shaw, Billericay." The counsel making the application submitted, that this omission of the Christian names was material. He also objected to the affidavit of debt, on the ground that although it stated principal and "interest thereon" to be due, it did not state the contract by which the interest became due. Upon these grounds it was contended that the defendant was entitled to be discharged out of custody on entering a common appearance.

*Per Curiam.*—The first objection is immaterial. As to the second objection we think the affidavit is sufficiently certain.

Rule refused.—*Pickman v. Collis, H. T. 1835. Excheq.*

ATTACHMENT AGAINST WITNESSES.—SUBPENA.—MATERIALITY OF WITNESSES.

*If it clearly appears that a witness who has been subpoenaed on a particular trial can give no material evidence on it, the Court will not allow an attachment to issue against him for disobedience to his subpoena.*

This was an application for an attachment against Lord Brougham and Vaux, upon the ground of his not attending the trial of *Dicus v. Lawson*, pursuant to a subpoena with which

his Lordship had been served, and 5s. for his expenses tendered to him.

*Purke, B.*, who tried the cause, stated that it was an action for a libel, but there was no question for the jury whether the libel applied to the defendant. The whole question raised at the trial was whether it was a libel or not. The attendance, therefore, of the noble Lord, could have been of no use whatever at the trial.

It was contended, on the part of the plaintiff, that there were other reasons for subpoenaing his Lordship, namely, for the production of certain letters, and to disprove the allegation contained in the libel. Besides, it was not necessary to shew that the evidence of his Lordship was material.

Lord *Abinger*, with whom the other Barons concurred, admitted that the general rule was not to require an affidavit for the purpose of obtaining an attachment against a witness to shew that the evidence of the witness would be material at the trial; but that when it was clear from the notes of the Judge who tried the cause, and from the Judge himself, that there was no contempt, they would not allow the process of the Court to be the means of vexatious proceedings against individuals. The rule for an attachment therefore must be refused.

Rule refused.—*Dicas v. Lawson*, H. T. 1835. *Escheq.*

COURT OF COMMON PLEAS, LANCASTER.—  
JUDGMENT NON OBSTANTE VEREDICTO.

*The new act, regulating the proceedings in the Court of Common Pleas, Lancaster, confers no power on the Courts at Westminster, to enter up judgment in any particular way.*

This was an application to enter up judgment for the plaintiff, *non obstante veredicto*, in a cause wherein the defendant had obtained a verdict. The application was made under the 4 & 5 W. 4, c. 62, s. 26.

*Per Curiam*.—We have no authority under the act on which the application is founded, to direct in what way judgment shall be entered up. The rule prayed for, therefore, cannot be granted.

Rule refused.—*Potter v. Moss*, H. T. 1835. *Escheq.*

SALE OF PROFESSIONAL PARTNERSHIP.

The following report of a trial at the *Nisi Prius* sittings after the last term, before Lord *Denman*, may be useful to many of our readers:

Sir *John Campbell* stated, that the plaintiff resided in Chancery Lane, carrying on an extensive business as a law agent, being employed in arranging law partnerships, &c. The defendant was an eminent solicitor, who had car-

ried on business with great success, and had been raised to the dignity of an alderman, and being desirous of retiring from the more active duties of the profession, he wished to have three gentlemen to join him. He accordingly applied to the plaintiff, and stated to him his wishes, that each of the three new partners were to have one-fourth of the business, and were to pay a premium among them of 2000*l.* The plaintiff's terms were 5 per cent. on the amount of premium, if the negotiation were brought to a successful termination; but if it went off, he did not have anything. The plaintiff accordingly entered into a negotiation with three gentlemen of the names of Flower, Sandell, and Holt, each of whom were to pay Mr. Harmer 2000*l.* premium; thus the plaintiff obtained for the defendant a premium of 6000*l.*, instead of 2000*l.* The plaintiff was therefore entitled to 300*l.*, and in October 1833, the defendant paid the plaintiff 100*l.* on account, begging to be allowed time to pay the remainder. He now refused to pay any further sum.

The following was the evidence:

*David Laeula*.—I was clerk to the plaintiff, who carries on the business of a law agent to a great extent, negotiating partnerships between gentlemen of the legal profession; his usual terms are 5*l.* per cent., and 10*l.* per cent.; he never takes less than 5*l.* per cent. Alderman Harmer came to the office in July, 1832; he said he was in want of some partners, and should expect a premium with them of 2000*l.*, for three partners—not with each. The plaintiff undertook to negotiate for them, and exerted himself very much. He procured Holt, Flower, and Sandell. In December 1832, I called on Alderman Harmer, and asked for the balance of the plaintiff's fees. On the preceding October the defendant called, and said he was vastly satisfied, that he had not expected so large a premium, but that he had got 6000*l.* with them, and would pay 5*l.* per cent. out of the first monies he received. There were names on the door of Harmer, Flower, Holt, and Sandell. When I called in December, the defendant said he was sorry he could not settle with the plaintiff then, but that if he would send him a receipt in three months for 300*l.*, he would pay him the balance of 200*l.* I called again with the receipt in three months; the defendant said he could not settle with him then, but would call and do so.

Cross examined.—Mr. Sandell paid the plaintiff 5*l.* per cent. on the premium of 2000*l.* which he paid.

*Henry Hugh Pike*, son of the plaintiff.—I am an attorney. My father never receives less than 5*l.* per cent.; if the negotiation goes off, he receives only a 5*l.* note. I made an application to the defendant on the 4th of December last. I made a demand on him for 200*l.*, the balance of fees; he said, "I will call and pay the fees, but I wish it to stand over for six months longer; and then said, he thought my father ought to be satisfied with 3*l.* per cent.

Cross examined.—I brought an action against



Mr. Flower, one of the partners, and recovered the 5l. per cent. from him for my father. I heard from my father, that they had paid 3000l., and given security for the rest. He was to have 10l. per cent. from Sandell, and 5l. per cent. each from Flower and Holt. I did not deny before the Judge, that 100l. had been paid; but I did not choose to prejudice my father's case by making admissions.

Re-examined.—My father is always employed, and paid on both sides.

Mr. Theiger, then addressed the jury for the defendant, contending, that his friend had undertaken to prove a specific bargain, and if he had done so, there would have been an end of the case. It appeared to him, that more unsatisfactory testimony was never offered, and that there never was greater reason to doubt whether they had had a true representation of the case. They had heard from the plaintiff's son, that he enjoyed a very extensive monopoly in procuring legal partnerships; for, unfortunately for the town, there was only one Pike, who was compelled to be employed on both sides. The learned counsel then adverted to the circumstance of the defendant having stated that he should be contented with a premium of 2000l., and the plaintiff having induced the three parties to give 6000l., and that he had already received 600l. for his trouble, and was anxious to get 200l. more. It was impossible that a man could act faithfully for both sides.

Lord Denman, in summing up, said, the evidence was very distinct and pointed, if they believed the witnesses. Although the plaintiff's conduct might have been a hardship on the other parties, still the defendant had no right to complain of it. The question was, whether, from the conversations, they inferred that the defendant undertook to pay 5l. per cent. on such premium as he might obtain; if they thought so, they would find for the plaintiff, with 200l. damages.

The jury retired for some time, and then returned a verdict for the plaintiff.—Damages 50l.

*Pike v. Harmer*, sittings at Nisi Prius, after Hilary Term, 1835.

We are informed, that in the Registry Office of the Law Institution, there are books opened, in which may be entered any professional partnership, or practice to be disposed of, or wanted to be purchased, the fee for which is very moderate.

to the subjects which were notified at the close of the last Session.

The principal of these were:—

1st. The Bill to abolish Imprisonment for Debt, except in cases of fraud, and to amend the Law of Debtor and Creditor.

2d. The Bill for rendering uniform and regulating the execution of all Wills of Real and Personal Property.

3d. A Bill to facilitate the Enfranchisement of Copyholds, and gradually to bring all Land in England and Wales to the Tenure of Free and Common Socage.

4th. A Bill to give Courts of General Quarter Sessions the power of trying Civil Cases to the amount of 20l.

We understand that all these plans, according to the details of them last Session, will undergo considerable alteration; and perhaps in a modified shape, some of them may pass into law.

The other measures of which notices were given in the last Session for the next, are of less practical importance to the profession, though worthy of public attention. They consist of alterations in the Criminal Law, Grand Juries, Coroners, Observance of the Sabbath, Usury, &c.

We shall take the earliest opportunity that may be afforded, of calling the attention of our readers to the several measures which may from time to time be brought forward, affecting the administration of justice.

#### SITTINGS OF THE CENTRAL CRIMINAL COURT.

Monday	-	-	March 2
Monday	-	-	April 6
Monday	-	-	May 11
Monday	-	-	June 15
Monday	-	-	July 6
Monday	-	-	August 17
Monday	-	-	September 21
Monday	-	-	October 26

JOHN CLARK,  
Clerk of the said Court.

#### NOTES OF THE WEEK.

##### PROJECTED LAW REFORMS.

We are not yet prepared to state the probable changes in the Law during the Session of Parliament which is about to commence. But it may be useful to advert

#### ANSWERS TO QUERIES.

##### Common Law.

GAME LAWS.—RABBITS. P. 208.

The 52 G. 3, c. 93, is not expressly repealed by 1 & 2 Wm. 4, c. 32, as a reference to the

first section of that act will show, it not being enumerated among those which are thereby repealed. If S. W. should imagine that it may virtually repeal it, s. 5, I think, will remove his doubts, by which all parties who were obliged, before the passing of 1 & 2 W. 4, c. 32, to take out certificates, are by that section still obliged to do so: in short, the effect of that section is, to conform all the acts relating to game certificates, not expressly repealed by the first section of the act.

SPES.

### Estate of Property and Embowment.

#### ESTATE FOR LIFE.—FORFEITURE. F. 239.

1. The remainder to *A.*'s children comes within Mr. Fearn's definition of a contingent remainder, p. 8, "where a remainder is limited to a person not ascertained, or not in being at the time when such limitation is made." The children were not in being at the time of the limitation being made, and therefore the remainder to them was contingent till their birth, when it would vest. The remainder, therefore, vested in such children as were born, or were *en ventre sa mère* at the time of the forfeiture; but the remainder to such as were not in being still remaining contingent, it would be destroyed, I think, as regards them, by the failure of the particular estate.

2. The remainder to *B* was contingent on the event of his surviving *A.* Every contingent remainder must have a particular estate to support it, or it fails. *A.*'s committing an act of forfeiture destroyed the particular estate, and therefore the contingent remainder was defeated.—Fearn on Contingent Remainders, p. 3, chap. 4.

3. The remainder man can always enter for a forfeiture.

SPES.

#### REAL PROPERTY.—WILL. F. 240.

If a declaration of revocation be contained in an instrument purporting to be a will, the same must be executed as a valid devise of lands; that is to say, the three or four witnesses must attest the same in the presence of the testator, which ceremony is not required in a mere declaration of revocation, the same being by the 29 C. 2, c. 3, declared to be valid, if only signed by the testator, in the presence of the witnesses; if, therefore, the latter writing be intended to be made a will, but wants that perfection which is required by law, it shall not be intended as a writing distinct from a will, so as to make a revocation within the meaning of the act.—Werthington on Wills, p. 470. *Egglestone v. Speke*, 3 Mod. 259; *Onions v. Tyrer*, 1 P. Wms. 343; *Roberts on Wills*, vol. 2, 5. The will executed in the presence of, and attested by two witnesses, operates neither as a will of real property, nor as a revocation.

SPES.

#### DEVISE, CONTINGENT OR EXECUTORY. FF. 226, 229, 223, 80.

"T. O. B." has thought proper to attack me, and your correspondent "J," who expressed a similar opinion with myself.

His second position, "that a limitation by way of remainder to such children as shall be in *esse* at the time when the particular estate ends, and the remainder is to take effect in possession, is a contingent remainder, because it depends upon the event of any such children continuing in *esse* until the particular estate ends. *Roe v. Briggs*, 16 East, 406," confirms my view of the case.

"T. O. B." cannot have read the judgment of Lord Ellenborough in the above case: he says, "Here the estate is limited, not to any persons in being (*nor was it in the case under discussion*), nor to any persons of whom it could be predicated for certain, that they ever would be in being (*nor could it in this case*), or that if they ever came into being, they would be so at the death of the testator's son Richard (*nor could it be predicated in this case, that they would be in being at the death of Mary*), the limitation being after the decease of his son Richard 'unto the heirs of the body of my said son Richard Clemett, lawfully begotten or to be begotten, equally amongst them, as shall then be living' (*in this case it was to Mary for life, and after her death, to her eldest child 'then' living*); so that the remainder is contingent, and depends not only on the event of there being any child or children born, but on the event of any of them being living at the death of their father (*in this case the contingency was, not only that there should be a child born, but that the child should be living at the death of the tenant for life*). And no case has been shown where an estate depending on such a contingency has ever been held vested." This case may be called one in point, in favour of my opinion. The testator meant the eldest child living at the decease of the mother to be entitled in remainder, and the vesting of the remainder at the time of the forfeiture would not forward his intention in the least; in fact it would do violence to it.

SPES.

### QUERIES.

#### Common Law.

##### LODGING AND BOARD.—NOTICE.

A person goes to live with another, to be boarded, washed for, and attended on, and to have the use of two furnished rooms, for which he is to pay at the rate of 80*s.* a year, payable quarterly. The arrangement was not entered into for any specified time, nor any agreement made as to notice to quit. Does not the mixed nature of the accommodation afforded take it out of the general rule as regards tenancy and rent? and would not a month's notice to determine such arrangement be held sufficient? ADVISER.

## LIABILITY OF INNKEEPER.—QUEST.

In the 3d vol. of Blackstone, ch. 9, p. 166, appears the following remark: "If an innkeeper or other victualler hangs out a sign and opens his house for travellers, it is an implied engagement to entertain all persons who travel that way; and upon this universal assumption, an action on the case will lie against him for damages, if he, without good reason, refuses to admit a traveller." Is there any decision in support of this? Is an innkeeper compelled to furnish refreshment to a traveller during the hours of church service on a Sunday?

T. P.

## HAWKERS NOT LICENSED.

*A.* has a tea-shop in a small country village. *B.* and *C.*, her sons, travel to sell tea for her, which they carry in hampers with them, and deliver as they sell. They have not taken out a license, as required by the Pedlar Act, 50 G. 3, c. 41. Can *A.* enforce the payment of debts thus contracted with her?

J. H.

## UNSTAMPED NOTE.

*A. B.*, is the holder of a promissory note for 20*l.*, payable on demand. The note not being stamped, can *A. B.* recover on such note, by paying the penalty of 5*l.* and the stamp for the amount of 20*l.* thereon to be impressed? or is it an illegal transaction? The note is beyond six months due.

A SUBSCRIBER.

## Property and Conspicuous.

## MORTGAGEE IN POSSESSION.

*A.* is mortgagee in possession of certain freehold premises, and *B.*, the tenant, became bankrupt on the 22d day of March, 1834, and his assignees were shortly afterwards appointed. At the time of the bankruptcy the sheriff was in possession of the bankrupt's effects, under two writs of *f. fa.*, and immediately after the choice of assignees, possession was likewise taken on their behalf. The assignees made several applications to the Court to set aside the judgments, and the sale of the bankrupt's effects was from time to time postponed, in consequence of several orders of Court, and no sale took place until the latter end of August last, and possession of the premises was only delivered up to *A.*, the mortgagee, in the beginning of October last. It is contended on the part of the mortgagee, that the sheriff and assignees were only entitled to keep possession of the premises a reasonable time, to enable them to dispose of the bankrupt's effects, or at all events they should have removed the same to some other place, and given up possession of the premises. Can the mortgagee in possession claim rent from the sheriff or assignees, for the period possession was withheld from him, allowing a reasonable time for disposing of the bankrupt's effects?

A COUNTRY SUBSCRIBER.

## THE EDITOR'S LETTER BOX.

## EARLY VOLUMES OF THE LEGAL OBSERVER.

In consequence of several applications from new subscribers, who are desirous of obtaining the early volumes of the Legal Observer, the Publisher has arranged for supplying the first four volumes, in boards, at 12*s.* each, and the first and second volumes of the Monthly Record at 10*s.* each.

We avail ourselves also of the suggestion of a subscriber, to incorporate the Digest of Cases and the Commentaries on the Statutes for the Years 1833 and 1834, into one volume, and shall continue the same at the close of each year.

**ANNUAL DIGEST OF THE STATUTE AND COMMON LAW FOR 1833.**—This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Courts, in the Year 1833. Edited by BARRISTERS. Price 12*s.* in boards.

**ANNUAL DIGEST of the STATUTE and COMMON LAW for 1834.** This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Year 1834. Edited by BARRISTERS. Price 12*s.* in boards.

The First Quarterly Part of the Digest of all reported Cases in all the Courts for 1835, is now published, price 2*s.*

Many thanks to S. G. for his frequent suggestions: the last, we think, should not be adopted at present.

The reply of "A Sufferer," on the subject of the Six Clerks' Office, shall appear in an early number.

The Poetical Report of T. B. is not exactly suited to the taste of our readers, and certainly not at the present season.

"Homo"'s advice appears to be well worthy of consideration, and to a limited extent will be adopted in the next volume.

The suggestion of X. should be sent to the proper official authority of the Incorporated Law Society.

The Queries and Answers of T. L., "A Subscriber;" A. P. D.; H. C.; J. S.; E. P.; "A Country Attorney," and G., have been received.

"A Subscriber" will observe from the statement in our last number, at p. 319, that the new regulations of the Inns of Court will not apply to Articled Clerks.

The letter on the Common Pleas Termages shall be attended to.

# The Legal Observer.

Vol. IX. SATURDAY, FEBRUARY 28, 1835. No. CCLV.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE REFORM OF THE INNS OF COURT.

At the present eventful time, it would be idle to attempt to give any account of the proposed law reforms of the present session of Parliament. We leave, therefore, this subject, on which we were about to write, and turn to one which we have repeatedly brought before the notice of the profession and the public, and which we shall never leave until the proper reform be effected;—the present system of legal education being, in our opinion, a practical grievance which must speedily be redressed.

We very lately<sup>a</sup> adverted to the alteration which had been effected by the Society of the Inner Temple, in dispensing with any peculiar advantages to the graduates of the Universities of Oxford, Cambridge, and Dublin. The Society of Lincoln's Inn has refused, by a small majority, to make the proposed alteration in its rules; and perhaps the conclusion it has come to is right, until a public and strict examination is instituted before a law degree is conferred.

The general subject has recently engaged the attention of another pen.<sup>b</sup> The writer, who signs himself a Barrister, adopts the views which were fully developed by our able contributor “*A Cestui que Trust*,” in a series of papers on the subject. The

Barrister contends that the property of the Inns of Court should be devoted to the education and lodging of its members; and, although rather inclined to flippancy, is entitled to some attention. He commences by tracing, by the means of Dugdale, the establishment of the Society of the Middle Temple, and he thus adverts to the grant which was made to them of their property by James the First:

“Looking at the words of the grant, they seem so clear and explicit, as not for a moment to admit of any doubt. The property is expressed to be given for the “Lodgings, Reception, and Education of the Professors and Students of the Laws of these realms.” It will perhaps, however, be satisfactory to refer to ancient usage, in order to ascertain the construction that has been put upon them: as, should it appear that a different construction has, from time immemorial, been put upon these words, from what they would seem naturally to bear, such a fact must, I readily admit, have great weight. The early accounts of the Society are, as I have already stated, lost; but there is no reason whatever for supposing the usage then different from what it was in subsequent times. Several Orders are given by Dugdale, as early as the reigns of Henry 6. and Edward 6; and a minute account is given of the state of the Society in the time of Henry 8. From thence, we have a series of Orders made, from time to time, for the regulation of the different Inns, by the Lord Chancellor and Judges; all of which shew clearly a continuance of the same system; until we come to Dugdale's own time, when we again have a particular account: without entering minutely into which, it may suffice to say, that it agrees in the main with the account given of the state of the Society in the time of Henry 8, and shews that the trusts, as declared in the grant, were fully and efficiently carried into effect. These Societies then formed in reality, as they ought to do, the

<sup>a</sup> See *ante*, p. 289.

<sup>b</sup> A Letter to the Treasurer of the Honourable Society of the Middle Temple, on the present Management of that Inn; with a short Account of its Origin, and the Nature of its Institutions. Richard Watts, 1835.

great national seminaries of legal education. With the exception only of the Summer and Christmas vacations, they were kept open the whole year through, for the boarding as well as lodging of students. A system of education was carried on, the strictness of which might well startle modern ideas. Every day, after dinner, some legal question was argued among the students: in addition to which, a regular series of mootings, as they were called, was performed through the whole Hall; each lower rank arguing, in succession, before the one immediately its senior. Holidays were observed with the highest festivities, which were not unfrequently honoured by the presence of Royalty itself. The Readers were in the habit of giving as many as a hundred bucks in a season, for the use of the Hall; and Orders may be found, forbidding them to appear in public with more than thirteen "serving men" in livery:—with such state was it thought necessary to support the office!"

The writer then ridicules the idea of making dinners and formal attendance at lectures, the qualifications for being called to the Bar; and enforces the necessity of establishing regular lectures on the various branches of law and jurisprudence by the Inns of Court. He next gives the following somewhat doleful account of the dinners at the Middle Temple. It seems certainly hard, that the only thing attempted to be done by these learned Societies, should be done so badly.

"But, whatever may be said with respect to education, there surely can be no pretence for saying that our physical wants are fewer than heretofore. The only difference is, that at the present day the method of supplying them has become more refined. We might naturally, therefore, look for the same improvement in the Temple, as in other places. Yet what is the fact? That the dinners given there are served in a more slovenly way than in any second-rate tavern in London. Things seem here to have proceeded in an inverse ratio, and to have deteriorated exactly in the same proportion as they have elsewhere improved. Instead of the "liveried serving-men," dinner is now served up by four or five shabbily-dressed varlets, whose dirty faces, unwashed hands, and ebony-tipped fingers, might well defy the discernment of a Cuvier, to know to which race of mankind they belonged, and whose only object seems to be, to hurry dinner on as quickly as possible, and again as unceremoniously to hurry it away. The Hall, once the scene of such gay doings, and still the finest room, perhaps in the kingdom, is lit up by a few paltry lamps, that shine amid the gloom, "like good deeds in a naughty world;" and which would altogether fail even to render "the darkness visible," but for the aid of sundry tallow candles—dips—twelve to the pound, ranged along the table, in brass sticks, of a most unpolished description, in whose por-

tentous sockets they recline at their ease, humouring themselves "to the top of their bent" at every angle of inclination.

"Well may Charles,\* looking down on all this, and remembering the good olden times, wear that look of settled sorrow!—With respect to the dinners provided, there is not, perhaps, much to complain of. They are plain; and this they ought to be: but the reason they ought to be plain is, because they ought not to be expensive; and this they unquestionably are. As good a dinner might be had, for the same price, in any Club in London; and the Clubs are not notorious for cheapness. And these dinners, such as they are, are given only during term-time, not more than twelve weeks in the year. Why is this? Why, when there is every convenience, and so many members constantly reside in town, is not the Hall kept open the whole year through, with the exception, of course, of the long vacation? I may perhaps appear to dwell longer on this subject than it deserves; but it is one of those practical grievances which every one suffers from, and yet is ashamed of making a serious complaint about. I know of no time in a man's professional career so trying, as when first he comes to town—it may be from the University, or a comfortable home, where he has been accustomed to have every thing furnished with the utmost neatness and cleanliness—and is turned upon the town, to seek a cheerless dinner in a filthy chop-house. It is true, there are Clubs, of which he may become a member; but every man cannot belong to Clubs; and if he could, every man cannot afford it. Besides, does this furnish any reason whatever why the members should be deprived of the use of their own Hall? It was kept open in former times: why is it not now? I have, indeed, heard it assigned as a reason, that it was shut in consequence of some of the members misconducting themselves in the absence of the Benchers, and the inconvenience the latter found in being always under the necessity of attending. Whether or not there be any truth in the story, of course I cannot say; but I never certainly placed any dependence on it. I can, indeed, easily believe, that if the dinners were such as they were some three years ago, when the misconduct is said to have occurred—when the water came up in common earthenware pots instead of glasses, and the knives and forks, and indeed the whole furniture of the table, were such as would have disgraced a gentleman's kitchen—I say, I can easily believe, in such a state of things, that some member, in a fit of disgust, may have thrown the whole upon the floor; but I do not believe, that if the members were properly treated, they would be guilty of any ungentlemanly conduct. Shew men that you respect them, and even the worst will seldom be found wanting in respect to themselves."

The high price paid for chambers is then

\* A celebrated portrait of this monarch, by Vandyck, hangs at the top of the Hall.

gone into, and the large revenues thereby acquired are mentioned; but here the learned writer speaks without sufficient information. It is after all only guess-work, to say that the income of the Inner Temple is 20,000*l.*, and that of the Middle Temple 6000*l.*; and this state of things we have already deplored. Why is it that the members of these and the other Inns of Court should not have exact and regular information with respect to their respective property?

Other minor grievances are then alluded to; and the writer concludes by proposing that the Benchers, against whom of course he brings no charge, should "appoint nine or ten of the younger portion of the profession, who have plenty of time and to spare on their hands for such a purpose, to investigate the state of the Society in the particulars complained of, and report upon it to the Benchers; and also what means they thought might be best adopted with a view to a reformation."

## OF THE PARTIES TO ACTIONS.

THE rules of law respecting the proper parties to be made plaintiffs and defendants, and the consequences and mode of taking advantage of a deviation from them, are subjects of such frequent occurrence, that we think it will be acceptable to our readers to be presented with a summary view of them.

In all actions, the general rule is, that the action must be brought by the party who has the *legal* interest in the debt, damages, or be it what it may, the cause of action; and therefore, a person having no interest of his own in the cause of action, or having only an equitable interest in it, cannot maintain an action: thus, on a contract made by a *mere* servant on account of his master, the master must bring the action: so, not a *cestui que* trust, but the trustee, must bring the action; and if a trustee fails in his duty, yet being regarded at law as the real owner, the *cestui que* trust cannot bring an action against him, for the interest of the *cestui que* trust is not a legal interest, but is merely equitable. On a lease by *A.* and *B.*, containing a covenant with *A.*, *B.*, and *C.*, to pay rent to *C.*, *C.* joined with *B.* after *A.*'s death, in an action for the rent, and on the ground that *C.* was only a *cestui que* trust, it was held that he could not be

joined in the action, and the defendant had judgment.<sup>a</sup>

And where the legal interest in the cause of action, is jointly in several, all ought to join in the action: thus, where in an action on a lease, on the covenant to repair, the plaintiff set out a title in himself and another not joined with him in the action, the Court upon demurrer, gave judgment for the defendant.<sup>b</sup> So, where the plaintiff and two other persons not made plaintiffs, were described as *parties* of the third part in an indenture, wherein the defendant covenanted with all three of them, to pay an annuity to them; it was held, that the two others ought to have been joined as plaintiffs, although they had not executed the deed,<sup>c</sup> for they might do that at any time; and the case was likened to that of executors, all of whom must join in an action, though some only have acted. And if it is a joint interest in several, all must join, though the agreement with them is in terms joint and *several*; thus, where the declaration set out a deed of three parts, between *A.*, *B.*, and *C.*, respectively, and the covenant declared upon was in terms a several covenant with *A.*, but the interest in the subject matter appeared to belong to *A.* and *B.*; the Court held, that *A.* being dead, the interest survived to *B.*; that had *A.* been living, *A.* and *B.* must have joined; and that *A.*'s executors could not sue, though the covenant was in terms several.<sup>d</sup> In this case it was first suggested, and it has since been so decided, that in a covenant to account, the interest of the covenantees in having such a covenant performed, may be several, so as to entitle them to bring several actions,<sup>e</sup> though in the *subject matter* of the account their interest may be joint, and in respect of it, they could only have a joint action.

If a covenant or agreement respecting a joint interest is with several, and some die, the survivors have the exclusive right of action; and when all are dead but one, that one has the exclusive right of action; and at his death his personal representatives have the exclusive right of action. Thus, a covenant was entered into with *A.* and *B.*, to pay to *B.* an annuity during the life of *A.*; *A.* and *B.* therefore, were joint covenantees,

<sup>a</sup> *Lord Southampton v. Brown*, 6 B. & C. 718.

<sup>b</sup> *Scott v. Goodwin*, 1 B. & Pol. 67.

<sup>c</sup> *Petrie v. Burg*, 3 B. & C. 353.

<sup>d</sup> *Eccleston v. Clipham*, 1 Saund. 153.

<sup>e</sup> *Owston v. Ogle*, 13 East 538.

their interest therefore at law was joint, though *B.* alone had the beneficial or equitable interest; *A.* survived *B.*, and during *A.*'s life *B.*'s administrator sued for the annuity; but the Court held the action survived to *A.*, and therefore gave judgment for the defendant.<sup>f</sup> In another case, there was a covenant with two to pay money to one of them: the party to whom the money was to be paid died, and his representatives sued whilst the other covenantee was living; it was held, that the action was not maintainable.<sup>g</sup>

The rule is the same, whether the interest arises upon an express or an implied contract. To exemplify it in the case of partners: upon a sale by one partner of partnership goods, all may join as plaintiffs, though the buyer did not know of the partnership; thus, where several part owners of a whaler sued for the price of some oil sold by one of them, and the defendant did not know that the others were interested; the Court said, the action may be maintained either in the name of the person with whom the contract was made, or in the name of the parties really interested.<sup>h</sup> this is continually done in cases of insurance.

A merely nominal partner, that is one whose name only appears, and who has no interest, need never be made a plaintiff. Thus, where a bank was carried on under the style of Thomas Teed and Co., and John Teed brought an action to recover a sum of money, paid out of the bank by mistake to the defendant, who was a customer; it was held, that, had the evidence of a clerk who was called to prove that Thomas Teed, (the father of the plaintiff,) had no interest in the bank, been satisfactory, the action was brought rightly.<sup>i</sup> This rule respecting nominal partners is strikingly illustrated in *Kell v. Nainby*; <sup>j</sup> that was an action on an attorney's bill: the plaintiff had a son, and his business was carried on under the style of Kell and Son; Kell and son was on his office door, and all his letters to the defendant were signed Kell and Son: but the son was called, and proved that he had no interest; that he was only a clerk at a salary; and on this evidence it was held that the action was brought rightly.

In the event of bankruptcy the rule is the same,—that the action must be brought by the parties legally interested; and there-

fore, as the assignment in bankruptcy vests in the assignees all interests in which the bankrupt was beneficially interested, his assignees should sue, and not the bankrupt. And an action commenced before bankruptcy, in respect of an interest which has passed to the assignees, is abated by the bankruptcy.<sup>k</sup>

Joint interests of a bankrupt vest in the assignees precisely as they belonged to the bankrupt, and therefore in respect of such interests the assignees must join as plaintiffs with the remaining solvent joint parties; and the action cannot be maintained if the bankrupt is made a plaintiff with the other parties.<sup>l</sup>

Interests, however, in which the bankrupt has only a legal interest, and not the beneficial interest, do not pass to the assignees; and therefore in respect of such interests the assignees have no title to sue, but that title remains in the bankrupt: interests, for example, held by the bankrupt merely as trustee, do not pass under the assignment: so, if the bankrupt before his bankruptcy has assigned his interest in any debt, and the assignment cannot be impeached, such debt does not pass under the commission, for the assignee of the debt has the beneficial interest in it, and consequently the assignees under the commission cannot sue, but the bankrupt should sue for it.<sup>m</sup>

As to interests acquired by the bankrupt after his bankruptcy and before his certificate,—they pass, indeed, under the assignment, but the assignees take them or not, as they think proper; and unless they elect to take, such interests may be sued for by the bankrupt. Thus, where an uncertificated bankrupt sued in trover for fifty barrels of beef which he had bought since his bankruptcy, he was held entitled to maintain the action, no evidence being given of the assignees having required the beef to be delivered to them.<sup>n</sup> But where, on the other hand, a bankrupt sued for money lent, and it appeared that the assignees had required payment, the bankrupt was held not entitled to maintain the action.<sup>o</sup> In such cases, it is said, the bankrupt has a defeasible property; the assignees may defeat it, but no other person; his

<sup>f</sup> *Anderson v. Martindale*, 1 East, 498.

<sup>g</sup> *Burford v. Stuckey*, 5 J. B. Moore, 23.

<sup>h</sup> *Skinner v. Stucke*, 4 B. & Ald. 437.

<sup>i</sup> *Teed v. Eworthy*, 14 East, 209.

<sup>j</sup> 10 B. & C. 20.

<sup>k</sup> *Kenniar v. Farrant*, 15 East, 622. 6 G. 4, c. 16, s. 63.

<sup>l</sup> *Eckhardt v. Wilson*, 8 T. R. 140.

<sup>m</sup> *Forster, a bankrupt, v. Marnoll*, 3 Bos. & Pul. 40.

<sup>n</sup> *Fowler v. Down*, 1 Bos. & Pul. 45.

<sup>o</sup> *Kitschen v. Bartsch*, 7 East, 53.

power has been compared to that of an alien, who may sue for lands, and unless the Crown interpose, may sue in an action for them: so the bankrupt may sue if he pleases, and the assignees may sue for the fruit of his contracts or not, at their election.

In the case of husband and wife, the rules vary as the subject-matter in question happens to be real or personal property, a chattel personal or a chose in action. To define what is a chattel may seem trite; but the plainest elements of knowledge require often to be stated for the sake of the light they cast on the remoter deductions. A chair, a table, a book, every thing the absolute property in which may be transferred by the mere delivery of possession, is a personal chattel; marriage, *ipso facto*, is a gift in law of the chattels of the wife to the husband; in other words, by the marriage the property in the wife's chattels vests in the husband, and he therefore may sue alone for them. Some things, such as promissory notes, bills of exchange, exchequer bills, and all negotiable instruments, the property in which passes by delivery, vest as chattels in the husband; though, for some purposes, they are also choses in action. And as the property vests by the marriage, no act of the wife is necessary to complete the title of the husband; and therefore, upon a bill given to the wife before marriage, but not due till after marriage, the husband was held entitled to sue alone,<sup>p</sup> though his wife had not indorsed it to him. *A fortiori*, he might sue alone for a table, a chair, or other thing belonging to his wife before marriage, which in no sense can be considered a chose in action.

The rule is different as to mere choses in action, such as debts, bonds, covenants, and agreements. To convert into value any mere chose in action which belonged to the wife before marriage, she must sue with the husband, and her interest must be described in the declaration. If also after marriage, a mere chose in action, a bond, for instance, is given to the wife, the husband not being named in it, the wife must be a plaintiff with the husband, because, it is said,—a phrase not very intelligible—she is the meritorious cause of action,—that is, the claim arises merely from the bond, and not from any consideration moving from the husband; it is a gift to the wife, not of a chattel, nor of any thing which the husband has the option of con-

sidering a chattel, and therefore the husband cannot enforce it without affirming it as a gift to the wife; and in affirming it as a gift to her, he is obliged to sue upon it according to the form of the obligation, and therefore to make her a party to the action. On a promise made expressly to the wife, the wife may be joined in the action, as, where the wife lets out her own skill, or her own labour, and the employer promises her to pay her; though in such a case the husband may sue without her, because he may renounce a promise made to his wife, and the law then would imply a promise to himself, the consideration being the wife's labour, for to the husband belongs the price of her labour. In like manner, upon a contract made with husband and wife jointly; as, upon a covenant with both, they may either sue together, or the husband may disaffirm the contract as to the wife, and sue without her.<sup>q</sup>

There is another rule sometimes laid down to decide the question of making the wife a party to the action: it is, to consider whether, in case of the husband's death, the right of action would survive to the wife, or go to the representatives of the husband; but this rule is evidently only an application, to the case of husband and wife, of the more general rule, which applies to that case in common with all others; namely, that the parties who have the legal interest should bring the action: for, if the action would survive to the wife, she has a legal interest in the cause of action; and then it is, not because the action would survive to her, but because she has this interest, of which the right of survivorship is only a consequence, that she should be joined in the action. Thus, as covenants regarding the wife's estate run with the estate, and would belong to the wife on the husband's death, she should sue upon them with her husband. If the husband dies without having reduced into possession his wife's choses in action, the action survives to her; and if she dies afterwards, without having enforced them, her representatives should enforce them, and not her husband's; though, in this case, equity, at variance with the law, gives the beneficial interest to the representatives of the husband, and the wife's representatives recover as trustees for those of the husband.

It is a general rule,—to which the only

<sup>q</sup> *Ankerstein v. Clarke*, 4 T. R. 616.

<sup>r</sup> *Richards v. Richards*, 2 B. & Adol. 482;

*Bette v. Kimpton*, Id. 275.



exceptions seems to be in case of exile or banishment of the husband,\*—that a married woman cannot sue without her husband; *à fortiori*, she cannot maintain an action against her husband; but her husband may make her a gift of a chose in action (*quere*, of a chattel); for example, a promissory note to her, and being valid as a note, she may enforce it after his death against his executors by action.<sup>1</sup>

In actions against carriers for negligence, if the consignment was upon a *sale*, in general the vendee ought to be the plaintiff; because in general the goods are at the vendee's risk from the moment of their delivery to the carrier: the loss therefore consequent on the negligence being his, to him belongs the compensation in damages. The vendor, however, should sue if he has made a special contract with the carrier; and he also, it is said, should sue if he has paid the carrier; because the payment is the consideration of the undertaking:<sup>2</sup> and there is no distinction in this respect between carriers by sea, or ship-owners, and carriers by land. If the shipment is by order and on account of the consignees, then, as the property vests in the consignees by the delivery on board, it is to them that the carrier is liable.<sup>3</sup> If, on the other hand, the bill of lading expresses the freight as paid by the consignors or shippers, then the consignors should bring the action; and if the goods were not at their risk, so that the loss was not theirs, they would recover as trustees for the real owners.<sup>4</sup> Analogous to this is the rule, that where an agent contracts in his own name, the ownership of his principal cannot in general be set up as a defence to an action by him, but he may recover as a trustee for his principal,<sup>5</sup> though if the principal had been named the action must have been in the name of the principal; and a principal whose name is unknown to the buyer, may sue when the sale has been made by a factor, or person known as a general or commission agent.<sup>6</sup>

We might multiply illustrations; but we think, with the above before them, our readers will rarely be in any difficulty when the question arises, who are the proper

parties to be made plaintiffs; and at some future time, we will give a similar summary of the law respecting defendants.

## MEMBERS OF THE PROFESSION IN PARLIAMENT.

We have now, we believe, obtained a correct list of all the Members of the Profession in both Houses of Parliament. In the House of Commons List, those marked thus (\*) are not in the actual practice of their profession. The names have been compared with the Irish as well as the English Law List.

### HOUSE OF LORDS.

Abinger, Lord . . .	Chief Baron.
Bexley, Lord . . .	Benchcr of Lin. Inn.
Brougham and Vaux, Lord . . .	late Ld. Chancellor.
Denman, Lord . . .	Chief Justice of K.B.
Eldon, Earl . . .	late Lord Chancellor.
Ellenborough, Lord . . .	Chief Clerk of the Court of K. B.
Erskine, Lord . . .	formerly a Commissioner of Bankrupts
Kenyon, Lord . . .	Benchcr of Middle Temple.
Lyndhurst, Lord . . .	Lord Chancellor.
Manners, Lord . . .	late Lord Chancellor of Ireland.
Plunkett, Lord . . .	late Lord Chancellor of Ireland.
Sidmouth, Lord . . .	Benchcr of Lincoln's Inn.
Stowell, Lord . . .	late Judge of the High Court of Admiralty.
Tenterden, Lord . . .	formerly Associate of the late Lord Chief Justice.
Wynford, Lord . . .	late Chief Justice of the Common Pleas.

### HOUSE OF COMMONS.

*Abercromby, Right Hon. J. ( <i>Speaker</i> ) . . .	Edinburgh.
Aglionby, H. A. . . .	Cockermouth.
Beckett, Right Hon. Sir J. ( <i>Judge Adv.</i> ) . . .	Leeds.
*Bernal, R. . . .	Rochester.
Blackburne, J. (K.C.) . . .	Huddersfield.
*Buller, C. . . .	Liskeard.
Campbell, Sir J. (K.C.) . . .	Edinburgh.
*Carter, J. B. . . .	Portsmouth.
*Dundas, Hon. J. C. . . .	York.
*Estcourt, T. G. B. . . .	Oxford (university).
*Ewart, W. . . .	Liverpool.

\* *Ex parte Franks*, 1 Moore & Scott, 1.

\* *Richards v. Richards*, 2 B. & Adol. 460.

\* *Davis v. James*, 5 Burr. 2680; *Moore v. Wilson*, 1 T. R. 659.

\* *Brown v. Hodgson*, 2 Camp. N. P. C. 35.

\* *Joseph v. Knox*, 3 Camp. N. P. C. 320.

\* *Sadler v. Leigh*, 4 Camp. 195.

\* *Thomson v. Davenport*, 9 B. & C. 78.

*Fergusson, Right	
Hon. R. C. . . .	Kinsdubright.
Fitzsimon, C. . .	Dublin (county).
Follett, Sir W. W. .	Exeter.
(Solicitor General).	Penryn & Falmouth.
Freshfield, J. W. . .	Leicester.
Goulburn, Serjt. . .	Meath (county.)
Grattan, H. . . .	Lancaster.
*Greene, T. . . .	Devonport.
Grey, Sir G. . . .	St. Ives.
*Halse, J. . . .	Bradford.
Hardy, J. . . .	Southwark.
Harvey, D. W. . .	Petersfield.
*Hector, — . . .	Oxford (city).
*Hughes, W. H. . .	South Shields.
Ingham, R. . . .	Oxford (university).
*Inglis, Sir R. H. .	Bandon.
Jackson, Serjt. . .	Chester.
Jervis, J. . . .	Ipswich.
Kelly, F. (K.C.) . .	Tiverton.
Kennedy, J. . . .	Dublin (university).
Lecky, Serjt. . . .	Maldon.
*Lennard, T. B. . .	Wick District.
*Loch, J. . . .	Tower Hamlets.
Lushington, S., LL.D.	Galway (town).
Lynch, A. H. . . .	Leith.
Murray, J. A. . . .	Oxford (town).
Maclean, D. . . .	Cardiff.
Nicholl, J., LL.D. .	Chippenham.
*Neeld, J. . . .	Clare (county).
O'Brien, C. . . .	Dublin (city).
O'Connell, D. . . .	Youghall.
O'Connell, J. . . .	Tralee.
O'Connell, M. . . .	Cork (county).
O'Connor, F. . . .	Drogheda.
O'Dwyer, C. . . .	Newport, Isle of
Ord, W. H. . . .	Wight.
Parker, J. . . .	Sheffield.
Pemberton, T. (K.C.)	Ripon.
Pepps, Sir C. C.,	
(Master of the Rolls)	Malton.
Perrin, Serjt. (P. S.)	Cashel.
Pollock, Sir F. (At-	
torney General)	Huntingdon.
Poulter, J. . . .	Shaftesbury.
Praed, J. M. . . .	Yarmouth.
Pryme, G. . . .	Cambridge.
*Rice, Right Hon.	
T. S. . . .	Cambridge (town).
Roebuck, J. A. . . .	Bath.
Rolf, R. M. (K. C.)	Penryn & Falmouth.
Scarlett, Hon. R. C.	Norwich.
Shaw, Right Hon. F.	Dublin (university).
Shell, R. L. . . .	Tipperary (county).
*Strickland, Sir G. .	Yorkshire (West).
*Strutt, E. . . .	Derby.
*Sutton, Right Hon.	Cambridge (univer-
Sir C. M. . . .	sity).
Talfourd, Serjt. . .	Reading.

Tancred, H. W. (K. C.)	Banbury.
Tennent, J. E. . .	Belfast.
*Tennyson, Right	
Hon. C. . . .	Lambeth.
Tooke, W. . . .	Truro.
Twiss, H. (K. C.) .	Bridport.
Villiers, F. . . .	Canterbury.
Villiers, C. P. . .	Wolverhampton.
Wilde, Serjt. (K. S.)	Newark.
*Wilks, J. . . .	Boston.
*Wilmot, Sir J. E.,	
Bart. . . .	North Warwickshire.
Wortley, Hon. J. S.	Halifax.
*Wood, E. . . .	Halifax.

## THE PROPERTY LAWYER.

No. XL.

### RIGHTS OF HUSBAND AS ADMINISTRATOR.

The following case is deserving of attention.

In contemplation of a marriage between Mr. Philip Holman Leader and Mrs. Lydia Dawson, articles of agreement were entered into between them, and signed by both parties. After stating that Mr. Leader was seised of a certain freehold estate therein described, situate at New Brentford, and that Mrs. Dawson was possessed of certain copyholds of inheritance therein described, situate at Isleworth and Old Brentford, and that Mrs. Dawson was also possessed of monies on securities, and of monies in the government funds, the articles continued as follows:—"A marriage is intended to be had between Mr. Leader and Mrs. Dawson; and it is agreed that Mrs. Dawson shall, on such marriage taking place, surrender the said copyholds to the said Mr. Leader in fee, and that all other the estate and effects of the said Mrs. Dawson shall, upon the said marriage taking place, be and become the property of the said Mr. Leader, except the monies in the funds: and it is agreed that the said monies in the funds shall be for the sole and separate use of the said Mrs. Dawson, to all intents and purposes, as if she were sole and unmarried; and that the said monies shall be conveyed or transferred to trustees, and a proper settlement executed, so as fully to carry into effect the intention of the parties; and in case of the said marriage taking effect, and the said Lydia Dawson surviving the said Philip Holman Leader, the said Lydia Dawson shall hold and enjoy the rents and profits of the freehold estate of the said Philip Holman Leader for her life." The marriage took effect, but no settlement was ever executed. The wife died in the husband's lifetime, without issue, and without having made any appointment of her separate

property; and the husband took out administration to her estate. The husband having subsequently died, the bill was filed by the next of kin of the wife against the executors of the husband's will, and against certain of his legatees; and it prayed a declaration that, upon the true construction of the articles, the plaintiffs were entitled to the wife's property in the funds, as if she had not been married.

*The Master of the Rolls.*—These monies were to be for the sole and separate use of Mrs. Leader, as if she were sole and unmarried. This expression has no reference to the devolution of the property after her death. She is to retain the same absolute enjoyment of the monies, and is to have the same power of disposition over them, as if she were sole and unmarried; but there is not one word here to vest the property after her death in her next of kin, or to defeat the right which her surviving husband is entitled to acquire as her administrator.—*Proudley v. Fielder*, 2 M. & K. 57.

## SELECTIONS FROM CORRESPONDENCE.

### No. XCIII.

#### CLERGYMAN'S PROTECTION FROM ARREST.

On the last day of Hilary Term cause was shewn against a rule *nisi* obtained on a former day calling upon the plaintiff to shew cause why the bail-bond given in the action should not be delivered up to be cancelled, on the ground that the defendant was privileged from arrest, he being one of the King's chaplains in ordinary. It was sworn on the part of the Rev. defendant, that he was appointed one of his majesty's chaplains in ordinary on the sixth day of December, 1831; that he had ever since retained his appointment, received an annual salary in respect thereof; and that he *had* performed duty before his majesty as such chaplain; *but he did not swear that he had done so more than once, nor how long it was since he had performed such duty.* The plaintiff, in opposition, swore that the Rev. defendant *had only performed duty once* before his majesty, since his appointment, and which was about *two years and a half ago*; that the defendant was residing in the country, where he had a living, and at which place he was arrested. Notwithstanding this, however, the Court thought that the Rev. defendant was protected, and made the rule absolute for having the bail-bond delivered up to be cancelled accordingly.

Thus a man gets into debt, with a SACRED promise of paying his creditor when the amount becomes due; but when due he positively refuses to perform such sacred promise so made; drives his creditor to take legal measures against him for its recovery; and upon his being arrested and giving a bail-bond, shields

himself under a privilege which he states he has, and accordingly applies to the Court to protect him from the proceedings of his just creditor, which the Court conceives itself bound to do.

Is such a person fit to perform the grave and sacred duties of a "Chaplain in Ordinary to his Majesty?" However, such appears to be the license granted, and so it must remain until altered. But does not this give us some idea of what we may expect, if the law of arrest is abolished?  
T. B.

#### TERMAGE FEES.

Sir,

I have not yet seen any calculation of what the officers of Court who caused the late rule of the Common Pleas as to termages will pocket on the occasion if the rule is complied with. On a rough calculation, there are 3000 attorneys in London, and of these, I have no doubt two thirds are admitted in the Common Pleas.

In the country there are upwards of 5000 attorneys; and, taking less than half as admitted in the Common Pleas,—say 2000, they will make together 4000 attorneys called on to pay up termages.

Since the Exchequer of Pleas has been thrown open, very few practise in the Common Pleas: and I have no doubt that the arrears between the town and country attorneys will average 20*s.* each, making 4000*l.* to be pocketed by the persons in question. Surely such a sum as this ought not to be extorted from men who have quite imposts enough already, and for what?  
DE RHÉ.

## PROFESSIONAL GRIEVANCES.

To the Editor of the Legal Observer.

#### SIX CLERKS' OFFICE.

Sir,

I GIVE your correspondent "*H.*" every credit for the correctness with which he has brought forward the various courses which might have been pursued to prevent what happened, and the adroitness with which he has thereby placed in the back ground my complaint, viz., the neglect to forward from the Six Clerks' office the plaintiff's notice of his intention to attend the following day to open the depositions, which, as I said before, if given at the office of the solicitor, instead of at the Six Clerks' office, the solicitor would not have been minus 30*l.*, costs out of pocket; and this makes, as I conceive, the instance I quote a good argument for altering the mode of giving notices.

We agree that information might have been given to the clerks in court immediately the order was obtained; but that being omitted, I submit, is no excuse for the clerk in court's

neglect to forward so very important a notice; and it would be wise to alter a system occasioning the possibility of such inconvenience and loss. I am anxious to have the assistance of "H," as he desires to see a reformation in the office in question, and also of some other of your numerous readers, in the very arduous task I have imposed upon myself, of detailing the abuses and inconveniences arising from the present condition of this powerful and long-standing establishment: and in the meanwhile, by your leave, Mr. Editor, I will relate another effect of a service at the Six Clerks' office, before I proceed to the other grievances I have in store.

A pocket order, by which I mean an order procured by a plaintiff, without notice to, or knowledge of the other parties to the suit, is obtained to take the documents deposited in the clerk in court's hands into the country, to be proved under a commission for the examination of witnesses; a copy of this order is served upon the clerk in court, and he keeps it; his client the solicitor is in total ignorance of the existence of such order, and requiring the production of the documents before the examiner afterwards in town, and at the hearing, moves to have the documents which he deposited, (not for safe custody), but under the common order for inspection after answer, returned to him, and this motion is met by an affidavit of the service of the pocket order on the clerk in court, and is of course dismissed with costs, the solicitor being held to have notice of all orders served on his clerk in court, whether coming to his knowledge or not.

In this case "H," will have some difficulty in giving the go-by to the neglect at the Six Clerks' office, by referring to the previous conduct of the solicitor concerned. And if it is borne in mind that such pocket order states that all the costs of the production of the documents are to be paid by the party obtaining it, and that in contradiction thereto it is alleged to be a custom with the clerks in court to receive fees for their attendance from every party to a cause who may examine a witness to any of the documents; and the suppression of the order in the case in question enabled the agent to the clerk in court to extract a sum of 6*l.* 6*s.* from his principal's client, in addition to 21*l.* for seven days' attendance in the country, besides coffee-house expenses; I am sure every one will admit that such inducements to a neglect of duty on the part of a clerk in court should be taken away, by substituting *service of all notices, orders, &c. on the solicitors*, instead of, as heretofore, on the clerks in court.

I am fearful of trespassing at too great length upon your columns at one time; but I will upon a future occasion, if you spare me room, point out to the correspondent in your last number, subscribing himself "a Solicitor of the Court of Chancery," a grievance connected with the Six Clerks' office more easily remedied, and the removal of which would tend more to his advantage than the repeal even of the certi-

cate duty. The prejudice against attorneys as to their supposed profits, will be found to ensure the continuance of this oppressive and unjust tax.

A SUFFERER.

## ATTORNEYS' ANNUAL CERTIFICATE DUTY.

*To the Editor of the Legal Observer.*

Sir,

You have occasionally referred to the very unjust impost laid on solicitors by way of an annual certificate. The injurious and oppressive nature of this imposition, exclusively inflicted on our profession, has been so often, so clearly and so unanswerably exposed, both in your publication and elsewhere, that I shall not presume to weary your readers by a repetition of the reasons and arguments which have been adduced in that respect. But, having occasion lately to refer to the parliamentary debates of some past years, on a totally different occasion, I chanced to light on the observations which I shall transcribe below; and thinking that I might relieve the tedium of the argument and enlarge the sphere of reasoning on the subject, by laying before your readers the views and observations of eminent men, not connected with the profession, and therefore beyond the imputation of interested motives, I have taken the liberty of presenting to your consideration the following extracts from speeches by the late Mr. Sheridan and the late Lord Holland. If you think them worthy of publication, they are at your service.

In a debate, on the 11th of July, 1804, Mr. Sheridan said:—

"He condemned the annual licenses required for attorneys, as illegal and oppressive. There were good and bad men in all professions: and why should that be selected for this oppression? Why might it not as well be laid upon physicians and merchants?"—*Cobbett's Parl. Deb.* v. 2, p. 1014.

Lord Holland, in a debate on the stamp duties, in the House of Lords, on the 29th of June, 1808, expressed himself thus:—

"This will severely affect attorneys, and he would never sanction any principle of taxation that tended to press with peculiar weight on any particular class of the community."—*Cobbett's Parl. Deb.* v. 11, p. 1096.

LONDINENSIS.

## SUPERIOR COURTS.

## Rolls Court.

## WILL.—CONSTRUCTION.—THE WORD “PROPERTY.”

*Held, that a bequest of “my wines and property in England,” will pass every species of property belonging to the testator in England, at the time of his decease, but will not extend to wines which he may have elsewhere.*

This was a suit for the administration of the estate of Lieutenant Colonel Arnold, who died in the East Indies, leaving a will, in which he made a bequest in the following words: “I give and bequeath the following sums to my dear wife, Anne Martin, 1000*l.* sterling, also my wines and property in England.” Under the decree of reference made upon the hearing of the cause, the Master reported that the testator, at the time of his death, had the following property in England, viz: 1734*l.* 17*s.* 6*d.* in cash and bills in the hands of his banker; 800*l.* 3 per cent. long annuities, standing in the names of trustees for the testator; a trunk of wearing apparel, and 32*l.* arrears of a pension, payable out of his Majesty’s Exchequer, besides the interest and dividends on a sum of 1716*l.* in stock, up to a certain event. The question now for the consideration of the Court was, whether all this property passed to the widow, under the words of bequest to her.

Mr. Pemberton, for the widow, insisted, that the effect of the bequest was to give to the widow the testator’s wines, not only in England, but in India and elsewhere, and all the testator’s property in England at the time of his decease, as reported by the Master. He referred to the cases of *Campbell v. Prescott*,<sup>a</sup> and *Mitchell v. Mitchell*,<sup>b</sup> as the nearest approaching to the circumstances of this case. It was also to be borne in mind, that the word property, was *nomen generalis*, and must be interpreted as comprehending all the testator’s property in England at the time of his decease.

Mr. Bishereth and Mr. Piggott, contra, argued, that the words of the bequest must be construed as a gift of the testator’s wines in England only, and such other property of the like description as wines, according to the rules of construction in such cases, restricting the apparent generality of the gift to things *ejusdem generis* with the particulars previously enumerated. In the case of *Porter v. Tournay*,<sup>c</sup> in a note to which are collected several cases relating to the rules of restricting general words, it was held that wines and books did not pass under the words “furniture,” “live or dead stock.” In the case of *Stuart v. The*

*Margina of Bute*,<sup>d</sup> the word “things,” in a bequest, was held to be restricted to things *ejusdem generis* with those previously enumerated in that bequest.

The Master of the Rolls, after reading the words of bequest, and the Master’s finding as above stated, said,—The question to be decided was, whether the widow was entitled to take all this property enumerated in the Master’s report. By one side it was contended, that she was only entitled by the terms of the bequest, to take those articles *ejusdem generis* with wine. On the other side it was contended, that the terms were general, limiting the bequest of property to all the property in England; and in order to get over the difficulty of arriving at the real intention of the testator, it was contended, that the wines ought not to be considered as limited to the wines in England, that there was no limitation of them in point of locality. He could not support such a construction, as was put in this latter part. The question then came to this: whether the words “my wines and property in England,” would or would not include every description of property the testator possessed in England at the time of his death. No word had a more comprehensive meaning than the word “property,” for every description of interest might be conveyed by a general bequest of property. Now it was singular to observe, that the testator had specifically bequeathed his wine, with property of a far more valuable description. Was there then any rule to limit this property to articles of the same description as wines? The introduction of one particular article, as in this case, clearly did not limit it, and therefore, the adoption of a restrictive construction could not be justified. Had any case been found in which the word property had been confined to the same description of article, as had before been enumerated? If the word was not used in the ordinary sense, something must be found on the face of the will to shew the sense in which the testator had used it; there was only one case in which the meaning of the word “property” was involved, to which he should refer, and that was the case of *Jones v. Sibun*.<sup>e</sup> There was no case in which the general meaning of the word property, had been confined to the description of anything before enumerated; The question upon the bequest in Lord Bute’s will arose on the word “things,” after a great number of particular articles previously enumerated. After much discussion and doubt expressed by Lords Redesdale and Eldon, it seemed to be their opinion, that the word was to be restricted to things *ejusdem generis* with those previously enumerated. Under these circumstances, he had to declare, whether the words “property in England,” were to be confined to property of a particular description. There were no authorities to support such a conclusion, and consequently he should decide, that the widow should take un-

<sup>a</sup> 14 Ves. 500.

<sup>b</sup> 5 Madd. 69.

<sup>c</sup> 3 Ves. 311.

<sup>d</sup> 4 Dow’s Par. Cas. 29.

<sup>e</sup> 4 Ves. See also *Kelly v. Poulton*, Amb. 609.

der the bequest all the property enumerated in the Master's report.

*Arnold v. Arnold*, at Westminster, Nov. 12 and 15, 1834.

**WILL.—CONSTRUCTION.—ABSOLUTE INTEREST.—ABATEMENT.**

*An unlimited bequest of the interest of a fund, is equivalent to a bequest of the capital. A direction by a testator to construe his gift favorably for the legatee, in case of doubt in the construction of it, will not protect it from abatement in the event of a deficiency of assets.*

Another bequest in the will of Lieutenant Colonel Arnold was submitted to the consideration of the Court. The testator gave to his daughter, L. H. Adams, the interest of 100,000 sicca rupees, to be invested in the English stock of the East India Company, or if transmitted to England, to be invested in government securities there; and if the 100,000 sicca rupees should not be sufficient to purchase 10,000*l.*, the deficiency to be made up out of his estate. And in a subsequent clause of the will, the testator directed, that if any doubt or difficulty should arise in that part of his will, it might be construed favorably to the legatee. There was no gift over of the fund; there was a residuary clause; the testator's estate turned out to be insufficient for the payment of all his debts and legacies. The questions raised on this bequest were two. First, whether Louisa Harriet Adams was entitled to the capital, or the interest and dividends only of the sum named? and secondly, whether, inasmuch as the assets proved to be insufficient, this legacy ought to abate proportionately with the other legacies.

Mr. *Blennan*, for Louisa Adams.—An unlimited gift of the interest of a fund, is equivalent to a gift of the fund itself. The expressed direction of the testator, that this bequest was in case of doubt to be construed favorably, shewed that he favored her beyond the other legatees. He cited the case of *Adamson v. Armitage*, 19 Ves.

Mr. *Bichorsteth* and Mr. *Piggott*, *contrâ*. Whatever might be the opinion of the Court as to the nature of the bequest, whether it was absolute, or for life only, there could not be a doubt that it must suffer a reduction with the other legacies.

The Master of the Rolls, was of opinion, that Louisa Adams was entitled to the capital of the gift, stated to be 10,000*l.* if vested in the stocks of this country. He was also of opinion; that the provision in the will for a favorable construction of this bequest, referred not to any deficiency of assets, but to any doubt or difficulty in the construction of it; and he therefore held, that this legacy must suffer an abatement proportionate with the other legacies of a general nature.

*Arnold v. Arnold*, at Westminster, Nov. 14th, 1834.

**King's Bench Practice Court.**

**MANDAMUS.—PARISH CLERK.—INCUMBENT. CHURCHWARDEN.**

*In order to restore a parish clerk by means of a writ of mandamus, it must be clearly shewn that the clerk has been displaced, and the writ must be directed to the incumbent, and not the churchwardens.*

In this case an application was made for a writ of mandamus, to be directed to the incumbent and church-wardens of a certain parish, requiring them to restore the parish clerk who had been displaced, and another person employed in his stead. No formal appointment of another person had been made, but another had been employed to do the duties of the office, and the applicant had been prevented from performing them.

*Patteson*, J., said, the writ must be directed to the incumbent and not the churchwardens, and that it must be clearly shewn that the applicant had been displaced. The rule might be granted.

Rule granted.—*Ex parte Cirkett*, H. T. 1835. K. B. P. C.

**ADMISSION OF ATTORNEY.—SERVICE UNDER ARTICLES.**

*If a clerk serves five years complete with one master, it will be no objection to his admission that a portion of his service was after the expiration of the articles, and which was so served to compensate for a necessary absence during the five years.*

The applicant in this case had been regularly articulated to an attorney for five years. He served the whole with his master with the exception of a few months, during which he was absent by his master's direction, for the purpose of obtaining a sum of money sufficient to liquidate the master's claim for premium. At the end of the five years he continued to serve his master for as long a period as he had been absent from his service during the five years. The question was, whether this was a sufficient service to entitle him to be admitted by the Court.

*Patteson*, J., directed that he should be admitted.

Admitted.—*Ex parte Warren*, H. T. 1835. K. B. P. C.

**ATTACHMENT FOR NON-PAYMENT OF COSTS.—MASTER'S ALLOCATUR.**

*If an application is made for an attachment for non-payment of costs to the plaintiff in a cause, it must be shewn in the affidavit supporting the application, that the person applying is the plaintiff.*

This was an application to obtain an attachment for not paying costs to the plaintiff in the cause, in obedience to the master's allocatur. The peculiarity in the case was, that the affidavit denying the payment did not describe the party denying it as the plaintiff in the cause.

*Patteson, J.*, refused to allow a rule to be taken on that affidavit, as consistently with it, payment might have been made to the plaintiff, to whom payment had been ordered.

Rule refused.—*France v. Wright*, H. T. 1836. K. B. P. C.

**EJECTMENT.—SERVICE OF DECLARATION.—COMMON ENTRANCE.**

*Although the entrance to a messuage, sought to be recovered in an action of ejectment, may be that of another messuage not sought to be recovered, that will make no difference in the proceeding.*

This was an application for judgment against the casual ejector. The only peculiarity in the service was, that the affidavit on which the application was founded, described the entrance door of the messuage in question to be the same as that of another messuage, which was not the subject of the proceeding in ejectment.

*Patteson, J.*, was of opinion, that that made no difference in the case; and therefore as the service was regular on the tenant in possession, the rule for judgment against the casual ejector might be taken.

Rule granted.—*Doe v. Roe*, H. T. 1835. K. B. P. C.

**EJECTMENT.—SERVICE OF DECLARATION.—INTERPRETER.—WELSHMAN.**

*If a tenant in possession does not understand the language of the person effecting the service of the declaration, an interpreter may be employed to explain the object of the service, although he has not been sworn.*

In this case an application was made for judgment against the casual ejector. The affidavit supporting the application stated, that the messuages sought to be recovered was situated within the principality of Wales. There were two messuages sought to be recovered in the action; both were in the occupation of Welshmen, one understood English the other did not. The service of the declaration was regular on the tenant who understood English. No personal explanation however was made by the deponent endeavouring to serve the declaration, in consequence of his not understanding Welsh. The deponent, therefore, got the assistance of the Welshman who could understand English, in order to interpret the explanation of the proceeding to his less accomplished countryman. The Welshman who made the explanation of course was not sworn; in all other respects, however, the service on the Welshman who could not understand English was regular.

*Patteson, J.*, thought that would do, although the interpreter was not upon oath.

Rule granted.—*Doe v. Roe*, H. T. 1835. K. B. P. C.

**INTERPLEADER ACT.—SHERIFF.—STAKEHOLDER.—DECLARATION.**

*A sheriff need not wait till an action is brought against him, before he applies for relief under the Interpleader Act.*

This was an application for relief on the part of the sheriff; a certain person having made claims to certain property seized by him under writs of execution, which had been placed in his hands. No action had been brought against him, and therefore, the learned counsel making the application, suggested, that as the relief to be given to the sheriff under the 6th section of the act, was to be the same as that granted by the first; and as by the 1st section it was provided, that relief could not be given until one of the claimants had declared, some difficulty might arise in consequence of no declaration having in this case either been filed or delivered.

*Patteson, J.*, said, there was a distinction between the case of a sheriff and a stakeholder; the sheriff need not wait for an action to be brought against him in order to entitle him to the relief of the Court.

Rule granted.—*Smith v. Boswell*, H. T. 1835. K. B. P. C.

**SERVICE OF RULE TO COMPUTE.—LANDLADY.—ACKNOWLEDGMENT.**

*It is not sufficient to serve a rule to compute, by leaving it with the landlady of the defendant, without an acknowledgment from the defendant that he has received it.*

In this case an application was made to make a rule absolute, for referring it to the master to compute principal and interest on a bill of exchange. The affidavit of service stated, that the rule nisi had been left at the lodgings of the defendant with his landlady, but that no acknowledgment had been received from him that the rule had come to his possession.

*Patteson, J.*, refused to make the rule absolute; but at the instance of counsel it was enlarged until the following term.

Rule enlarged accordingly.—*Gardner v. Green*, H. T. 1835. K. B. P. C.

**Common Pleds.**

**COSTS.—EXECUTOR.—TESTATOR.—BONA FIDES.**

*In order to exempt a plaintiff executor from paying costs of an unsuccessful action for a claim on the part of his testator, it must appear that the defendant has not acted with good faith.*

In this case an action was brought by an executor for a claim alleged to exist on the part of the testator on the defendant. The amount alleged to be due was 900*l.* The defendant paid into Court 500*l.*, and refused to inform the plaintiff how he proposed to reduce the amount. At the trial it appeared that in

the books of the testator there were no entries made to the amount sought to be recovered. A special contract and a custom in the trade were also shewn. The jury ultimately were of opinion that the defendant had paid in sufficient money, and accordingly found a verdict for the defendant. An application was now made to exempt the plaintiff from payment of costs, pursuant to 3 and 4 W. 4, c. 42, § 31. A rule *nisi* having been obtained, cause was shewn against it.

The Court, consisting of Lord Chief Justice Tindal, Park, J., and Bosanquet, J., were of opinion that under the circumstances of the case the plaintiff was not entitled to be exempted from payment of costs like any other unsuccessful plaintiff. The object of the statute on which the application was made was to place executors and administrators in the same situation as to costs as other persons, unless the Court should be of opinion, that under the special circumstances of each case, a different course ought to be adopted. Unless there was *mala fides* on the part of the defendant in the cause there was no reason for depriving him of the advantage bestowed on him by the statute in question. The mere refusal to state his defence, was certainly no reason for so depriving him, unless, indeed, that defence consisted of a receipt which clearly stated that the demand which the executor sought to enforce had been satisfied. That was not the case in the present instance; and therefore no necessity was imposed on the defendant to state on what grounds he proposed to resist the claim beyond the extent of 500*l*. The defendant, therefore, having succeeded, he was entitled to his costs in the same manner as if the plaintiff had not sued in a representative character.

Vaughan, J., dissented from the opinion of the majority of the Court, under the special circumstances of the case.

Rule discharged.—*Brown and others, Executors of Clerk, v. Croley and Sharman*, H. T. 1835. C. P.

### Exchequer of Pleas.

#### BAIL.—NOTICE OF JUSTIFICATION.—PRISONER.

*If bail justify pursuant to Rules of T. T., 1 W. 4, and a two days' notice of justification only is given, it must appear by it that the defendant is a prisoner, or it will be insufficient.*

In this case the justification of bail was objected to on the ground of the notice, which was a two days' notice, not alleging the defendant to be a prisoner, as was the case.

Alderson, B., refused to allow the bail to justify, and observed, that the established rule must be adhered to in cases like the present.

Bail rejected.—*Butten's bail*, H. T. 1835. Excheq.

#### CHANGE OF VENUE.—ACTION FOR LIBEL.—PLACE OF CIRCULATION.

*If a newspaper in which an alleged libel has been published, circulates in several counties, it may be made the subject of action in any of them.*

In this case a rule *nisi* had been obtained for the discharge of a Judge's order, directing a change of venue in this cause from London to Lincolnshire. It was an action for a libel which had appeared in the Lincolnshire, Rutlandshire, and Stamford newspaper, the circulation of which was in many counties, and in London also.

On this rule coming on for argument—Parke, B., was of opinion, that under these circumstances the order should not have been granted, and therefore directed the rule to be made absolute.

Rule absolute.—*Clementson v. Newcomb*, H. T. 1835. Excheq.

#### ATTORNEY AND AGENT.—COSTS.—WANT OF CERTIFICATE.

*When proceedings in a cause have been carried on in the name of an agent of an attorney, the Court will not interfere to inquire into the fact of whether the original attorney is on the roll, for the purpose of depriving him of his costs.*

A rule *nisi* had been obtained in this case, for the purpose of disallowing the plaintiff's attorney his costs, on the ground of his not being an attorney of this Court. It was an issue tried before the sheriff of Sussex, and a verdict had passed for the plaintiff, whose costs were taxed by the Master. The proceedings were carried on by and in the name of the attorney's London agent.

*Per Curiam*.—We are of opinion, that as the London attorney was an attorney of this Court, and his name on the roll, there is nothing irregular.

Rule discharged.—*Goodner v. Cover*, H. T. 1835. Excheq.

#### CHANGE OF VENUE.—PREJUDICE.—FAIR TRIAL.

*The observations of a plaintiff in a county election, as to the subject of an action brought by him, is not a ground for changing the venue in it.*

In this case a rule *nisi* had been obtained to change the venue from Surrey to London or Middlesex, under the following circumstances. This action was brought for the purpose of trying the right of persons to erect booths on the Epsom Downs: and during an election in which the plaintiff was engaged in Surrey, he had referred to the subject of this action in a way which the defendant considered would be highly prejudicial to him on the trial of the cause.

On shewing cause, it was submitted, that this application was without foundation, inas-



much, that if any prejudice existed, it was certainly in favour of the defendant, for the object of these proceedings was to affect the Epson races, which it was well known were extremely popular.

*Per Curiam*.—We cannot entertain this motion. The present rule must be discharged, and the costs be costs in the cause.

Rule discharged accordingly.—*Briscoe v. Roberts*, H. T. 1835. Excheq.

#### SETTING ASIDE REGULAR JUDGMENT ON THE PAYMENT OF COSTS.—AFFIDAVIT OF MERITS.

*An affidavit of merits made by a London agent, stating his belief in the merits, from the statement of the country attorney, is sufficient.*

This was an action of debt; a final judgment had been obtained. A rule *nisi* was afterwards obtained to set aside this judgment, on payment of costs, and an affidavit of merits.

On shewing cause against this rule, it was submitted, that the affidavit which was made by the defendant's London agent was not sufficiently positive; it merely stated, that the deponent believed, from instructions he had received from the country attorney, that the defendant had a good defence on the merits; but did not state his belief that those instructions were true.

The Court thought the affidavit sufficiently positive.

Rule absolute, on payment of costs.—*Schofield v. Huggins*, H. T. 1835. Excheq.

#### STAYING PROCEEDINGS ON PAYMENT OF DEBT AND COSTS.—CONDITIONS.—SET-OFF.

*It is not a matter of strict right in a defendant, to stay a plaintiff's proceedings on payment of debt and costs.*

This was an application for a stay of proceedings in this case on payment of debt and costs. It appeared on a former application to a Judge at chambers, that the plaintiff was indebted to the defendant in a small amount, for the recovery of which the defendant had commenced an action against the plaintiff. The application was refused; then, except on the condition of the plaintiff allowing the amount of a cross demand of the defendant, and for which an action had been brought by him, to be set off against the plaintiff's cause of action. These terms were refused. An application was now made for staying proceedings on payment of debt and costs, as a matter of right.

*Parke*, B. said, it was not a matter of right, and that the Court had authority to engraft such terms on staying proceedings as seemed proper. The terms sought to be imposed at chambers, by the learned Baron, were reasonable, and a stay of proceedings would be allowed on no other ground.

Rule refused.—*Jones v. Shepherd*, H. T. 1835. Excheq.

## NOTES OF THE WEEK.

### KING'S SPEECH.—LAW REFORM.

His Majesty, in person, opened the new Parliament on Tuesday the 24th of February.

We extract the following passages from the King's Speech,—bearing on intended alterations in the law.

"Measures will be proposed for your consideration which will have for their respective objects—to promote the commutation of *Tithes* in England and Wales—to improve our *civil jurisprudence*, and the *administration of justice in ecclesiastical causes*—to make provision for the more effectual maintenance of ecclesiastical discipline—and to relieve those who *dissent* from the doctrines or discipline of the Church, from the necessity of celebrating the ceremony of *marriage* according to its rites."

"I have not yet received the Report from the Commissioners appointed to inquire into the state of *Municipal Corporations*, but I have reason to believe that it will be made, and that I shall be enabled to communicate it to you at an early period."

"I rely with entire confidence on your willing co-operation in perfecting all such measures as may be calculated to remove all just causes of complaint, and to promote the concord and happiness of my subjects."

"I rely also with equal confidence on the caution and circumspection with which you will apply yourselves to the alteration of *laws*, which affect very extensive and complicated interests, and are interwoven with ancient usages, to which the habits and feelings of my people have conformed."

"I feel assured that it will be our common object, in supplying that which may be defective, or in renovating that which may be impaired, to strengthen the foundations of those institutions in Church and State which are the inheritance and birth-right of my people, and which, amidst all the vicissitudes of public affairs, have proved, under the blessing of Almighty God, the truest guarantees of their liberties, their rights, and their religion."

### HOUSE OF LORDS.

#### New Bills.

The Select Vestries Bill was *pro ferred* read a first time.

## HOUSE OF COMMONS.

## New Bills.

A Bill for the more effectually preventing Clandestine Outlawries, has been read the first time, and ordered to be read a second time.

*Notices of Motions for altering the Law.*

Mr. *Ferrets*. Bill to make provision for the Execution of Criminals within the County of Chester.

Sir *John Campbell*. Bill to abolish Imprisonment for Debt, except in cases of Fraud, and to amend the Law of Debtor and Creditor. [Wednesday, 4th Mar.]

Sir *John Campbell*. Bill to facilitate the Enfranchisement of Copyholds, to abolish Heriots, and to amend the Law respecting Copyhold Tenure while the same shall subsist. [Wedn. 4th Mar.]

Sir *John Campbell*. For the Amendment of the Law with respect to Wills, and to Executors and Administrators. [Wedn. 4th Mar.]

Sir *John Campbell*. Bill to amend the Law of Tenure. [Wedn. 4th Mar.]

Sir *John Campbell*. Bill to amend the Law of Escheat. [Wedn. 4th Mar.]

Mr. *Attorney General*. Two Bills, founded on the Report of the Ecclesiastical Commissioners for improving the Administration of Justice in Ecclesiastical Causes. [Tues. 10th Mar.]

Mr. *Poulter*. Bill to promote the better Observance of the Lord's Day. [Wedn. 11th Mar.]

Mr. *Charles Butler*. Bill to take away the Jurisdiction of the Ecclesiastical Courts in matters relating to Tithes. [Thurs. 12th Mar.]

The *Chancellor of the Exchequer*. Bill for the Relief of Persons dissenting from the Church of England, in regard to the Celebration of Marriages. [Tues. 17th Mar.]

The *Chancellor of the Exchequer*. Bill for the Commutation of Tithes in England and Wales. [Tues. 24th Mar.]

Mr. *Wills*. For the Consideration and Redress of the Practical Grievances of Protestant Dissenters.

Mr. *Tooke*. Address to his Majesty, beseeching him to grant his Royal Charter of Incorporation to the University of London, as approved in the year 1831, by the then Law Officers of the Crown, and containing no other restriction than against conferring Degrees in Divinity. [Thurs. 26th Mar.]

Sir *Sam. Whalley*. That it is the opinion of this House, that in any plan of Church Reform, it will be expedient to provide for

the Attendance of the Bishops in the House of Lords, that they may give their Advice, when requested, on questions affecting the Church, in the same manner that the Judges do upon questions of Law, but, like them, without having the power of voting. [Tues. 31st Mar.]

Mr. *Grote*. That the Votes at Elections for Members of Parliament be taken by way of Ballot. [Thurs. 2d April.]

Mr. *Cobbett*. Bill to Repeal the Poor Law Amendment Act passed in the last Session of Parliament. [Tues. 7th April.]

Mr. *Diwelt*. Resolutions for the complete Extinction of Church Rates throughout England and Wales. [Thurs. 7th April.]

Mr. *Ewart*. Bill giving Prisoners full Defence by Counsel and Attorney. [Thurs. 9th April.]

Mr. *Ewart*. Bill to Abolish Capital Punishments in certain cases. [Thurs. 9th April.]

## ANSWERS TO QUERIES.

## LAW OF LANDLORD AND TENANT.

ADVERSE POSSESSION. P. 63, VOL. 9.

"*Spes*," in answering this case (p. 239) states "That before the recent act for the limitation of actions, twenty years possession by a tenant without paying rent or acknowledging his landlord, would so far have given him a title, that no action of ejectment could have been brought against him, and the owner would have been driven to his possessory action." Now I submit that such a statement is far from being correct in point of law. Previous to that act there must have been twenty years *adverse possession* by the tenant, to take away the right of entry of the landlord and bar him of his ejectment; and it is very clear that the mere fact of nonpayment of rent for twenty years by a tenant, does not of itself create adverse possession; and, in my opinion, would not furnish a case of presumption of ouster. The answer to the above query will depend upon the law of presumption of ouster, or of any other act creating adverse possession. And the facts leading to such presumption will be possession and nonpayment of rent for thirty years and upwards; whence it follows, that these facts do not of themselves create adverse possession, being only a medium of proof whereby a jury may presume some other act creating such adverse possession. In endeavouring to reply to the above case, I carefully abstained from touching upon the doctrine of presumption, on account of the difficulty of defining its limits; and I contented myself with stating generally that nonpayment of rent, without more, does not constitute adverse possession. Besides, it struck me that there might be special circumstances in the above case, of which

I was not in possession, that might, notwithstanding length of possession, rebut the presumption of a previous ouster.—See *Doe v. Pike*, 3 B. and Adol. 738. E. P.

### Estate of Property and Conveyancing.

ESTATE FOR LIFE.—FOREITURE. P. 239.

1st. If the conveyance to *A.* and his children was under the statute of uses, the whole five children take an estate in remainder as joint tenants in fee, subject to open and let in any after born children of *A.* Otherwise, if the conveyance was at common law, in which case it would become necessary to consider the nature of the forfeiture; for if the remainders were discontinued, divested, or disturbed, by the act of tenant for life, then the two children born previously to the determination of the particular estate by forfeiture would take in exclusion of the others.—*Gilb. Uses and Trusts*, Sug. ed., note, p. 134; *Mogg v. Mogg*, 1 Meriv. 654; and see *Fearne*, last ed., 314, and note by Butler.

2dly. Here again it will be necessary to consider the nature of the forfeiture. If the remainders were divested, discontinued, or disturbed, then *B.*'s remainder is destroyed, as it is contingent, Bl. Comm. p. 171.

3dly. *B.* may enter, if he pleases, upon the forfeiture of *A.*, and recover by ejectment; and in case of *B.*'s forfeiture, then *C.* may do the like. E. P.

### QUERIES.

#### Practice.

COUNTY COURT.—PROCEDENDO.

Can a cause in the county court, not in replevin, be effectually removed by the writ of *re. fu. lo.* to the K. B. or C. P., without being subject to be brought back by *procedendo*? and is the party removing it bound to give security for costs?

R. H. C.

INSOLVENT DEBTOR.—SUPERSEDEAS.

*A. B.* is arrested by *C. D.*, and goes to prison. He subsequently petitions for his release under the act for the relief of Insolvent Debtors, and upon his hearing is remanded, at the suit of *C. D.*, his detaining creditor, for the space of nine months from the filing of his petition. Can *A. B.*, notwithstanding the adjudication of the Insolvent Debtors' Court, jus-

tify bail, and supersede out of the custody of the marshal of the King's Bench, warden of the Fleet, or whose custody soever he may be in? If he can so justify bail, and he be ultimately taken in execution by *C. D.*, how would he be affected if he again petitioned for his discharge? A SUBSCRIBER.

### THE EDITOR'S LETTER BOX.

EARLY VOLUMES OF THE LEGAL OBSERVER.

In consequence of several applications from new subscribers, who are desirous of obtaining the early volumes of the Legal Observer, the Publisher has arranged for supplying the first four volumes, in boards, at 12s. each, and the first and second volumes of the Monthly Record at 10s. each.

We avail ourselves of the suggestion of a subscriber, to incorporate the Digest of Cases and the Commentaries on the Statutes for the Years 1833 and 1834, into one volume, and shall continue the same at the close of each year.

ANNUAL DIGEST OF THE STATUTE AND COMMON LAW for 1833.—This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Courts, in the Year 1833. Edited by BARRISTERS. Price 12s. in boards.

ANNUAL DIGEST of the STATUTE and COMMON LAW for 1834. This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Year 1834. Edited by Barristers. Price 12s. boards.

The Paper of J. W. D., on Local Courts, is acceptable.

The Queries and Answers of J. S. and W. M. W., have been received.

The letter of J. C. shall be inserted.

CITY OF CANTERBURY.

Sheriff.

T. T. Pope, Esq.

Undersheriff.

Mr. W. M. Mount, Canterbury.

Town Agents.

Messrs. G. & T. Brace, Surrey Street, Strand.

Warrants are not granted in London upon writs issued to Canterbury, all warrants for that city being granted there.

# The Legal Observer.

Vol. IX.

**SUPPLEMENT  
FOR FEBRUARY, 1835.**

No. CCLVI.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORATI.

## LEGAL BIOGRAPHY.

### No. VII.

#### LORD KEEPER GUILFORD.

THE well-known Life of Lord Guilford, by his brother, the Hon. Roger North, renders it unnecessary to enter minutely into the particulars of his career, or the various anecdotes which the diligence of his Biographer (the Boswell of his age) has collected. Our object will merely be to sketch an outline of the principal events of his professional life, and to select such of the leading particulars as may be deemed interesting to lawyers in general.

Francis North was the second son of Dudley Lord North. After receiving the rudiments of his education at Isleworth, he was placed at Bury School, from whence he proceeded to St. John's, Cambridge, in 1653, where he directed his attention to mathematics and natural philosophy. In 1655 he was admitted a student of the Middle Temple.

His Biographer states, that "he used constantly the commons in the Hall, at noon and at night, and fell into the way of putting cases (as they called it), which much improved him, and he was very good at it, being of a ready apprehension, a nice distinguisher, and prompt speaker. He used to say, that no man could be a good lawyer that was not a good put-case."

"He was (says his biographer) of low stature, but had an amiable ingenuous aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a

mixture of red and grey. As to his humour, he was free from vanity himself, and hated it in others. His youthful habits were never gay or topping the mode, like other inns of court gentlemen, but always plain and clean, and shewed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In these things to the extreme was his aim; that is, not to be censured for a careless sloven, rather than to be commended for being well dressed. But as to his appearing in public, the composition of his temper was extraordinary, for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings wherewith to accuse himself, and yet was modest even to a weakness. I believe, a more shame-faced creature than he was never came into the world; he could scarce bear the being seen in any public places. I have heard him say, that when he was a student, and ate in the Temple hall, if he saw any company there, he could not walk in till other company came, behind whom, as he entered, he might be shaded from the view of the rest. And he used to stand dodging at the screen till such opportunity arrived, for it was death to him to walk up alone in open view."

In 1661 he was called to the Bar, and very soon afterwards was selected by the Attorney General to assist him in searching for authorities. He distinguished himself at an early period in an argument in the House of Lords, in the case of Hollis and other members of the House of Commons. To this he was indebted for his promotion to the rank of King's Counsel. He was indeed so young when he received that honor, that the Benchers of the Inn to which he belonged deferred calling him to the Bench until 1668, when the Judges interfered in his behalf.

"Knowing that success in circuit business was a cardinal ingredient in a lawyer's

good fortune," he persevered on the Norfolk Circuit, which he had selected, and it appears was "exceedingly careful to keep fair with the cocks of the circuit, and particularly with Serjeant Earl, who had almost a monopoly." "If he was concerned as counsel, he stood in great awe of the chief practisers; for they, having the conduct of the cause, take it ill if a young man blurts out any thing, though possibly to the purpose, because it seems to top them; and, sometimes, if it do not take with the Court, throw up, saying, *the cause was given away*; which almost blasts a young man. Therefore, when he thought he had a significant point to offer, he first acquainted the foreman with it, which was commonly well taken; and he in return would say, *move it yourself*, and then he seconded it."

He was named in the Commission for draining the Fens, appointed Judge of Ely, and his practice rapidly increased. The following account of Mr. North's professional habits and relaxations is interesting:

"His lordship's course of life, while he was in great business, was most philosophical, till he was Solicitor General and married, and then he kept house, and at meals scarce ever failed his family; but before, he used the commons in the hall at dinner personally, and at night in his chamber. And when he was out of commons, the cook usually provided his meals; but at night he desired the company of some known and ingenious friends, to join in a costelet and a salad at Chattelin's, where a bottle of wine sufficed, and the company dressed their own feast, that consisted in friendly and agreeable conversation. But in terms, and while business was stirring, he kept his chamber, because (in order to next day's work) the attorneys and agents came in at all hours; and then he desired the company of a friend or two, that, in the intervals of taking instructions, he might come out and solace with them a little, and return when he was summoned. And the repast among us all was only his commons and a single bottle: but what is that to the feast I mentioned, which was never wanting? When his practice was but little, and for the most part when he was a student, he made it a rule not to leave his chamber before eight at night; and if he had no appointed company, he hath often taken me to walk about in the gardens with him till bed-time; for he never loved at such times to be alone, but having any company he could discharge his thoughts by discourse. After he was of the King's Counsel he kept a coach, and at leisure times used to air himself in that, but with a friend to receive his discourse and give handles for more. But while I was with him, which was first while Sir Geoffery Palmer was but just alive, I cannot say I ever knew him to have been twice at any tavern."

The decease of the Attorney General, and the promotion of the Solicitor, left a vacancy to which Mr. North aspired; but in this object he was opposed, and Sir E. Turner appointed in his stead. Shortly afterwards, however, the latter was elevated to the Bench, and Mr. North became Solicitor General, and received the honor of Knighthood.

Sir Francis now turned his thoughts to matrimony, and various amusing negotiations on that subject are stated by his brother. We cannot indulge ourselves in narrating all the circumstances attending these interesting affairs. The following, however, may be taken as a sample:

"After he was called to the bar (says his brother) he applied himself closely to the attendance and operations of the law, and wanted refreshment such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to company, which he could not have at all times to his mind. He was no clubster, listed among good fellows; and often passed his evenings in walking, or solitary (if it may be so termed when he had only me with him), rather than join in any promiscuous society, or of such as were not either in his friendship or distinguished by some notable talents that recommended them. And he thought it would be an ease to his mind to know continually, after his business done, what was to become of him; and that he thought best provided for by a family and housekeeping, which is never well settled without a mistress as well as a master of a family. These considerations inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatsoever; but being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found who had less reason to expect it; but without some advancement in that way he was not disposed to engage himself.

"That which sat hardest upon his spirits was, how he should give a fair answer to the question, 'What jointure and settlement?' He used to own but one rood of ground in the world that yielded him any profit, which was Westminster hall; a meagre particular unless he might have added, as Finch did, his bargain 20,000*l*. There came to him a recommendation of a lady who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich, but after his death to become worth nobody knew what. His lordship got a sight of the lady, and did not dislike her; thereupon

he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement, but only the old gentleman asked him what estate his father intended to settle on him for present maintenance, jointure, and provision for children. This was an inauspicious question, for it was plain that the family had not estate enough for a lordship, and none could be to spare for him. Therefore he said to his worship only 'That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with the answer.' And so they parted, and his lordship was glad of the escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had at that time a stout heart, and could not digest the being so slighted, as if in his present case a profitable profession and future hopes were of no avail. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter, and thenceforward despised his alliance."

Ultimately he married Lady Frances Pope, one of the daughters of the Earl of Down, on which occasion he added 6000*l.* to her fortune of 14,000*l.*, for securing to his lady a jointure of 1000*l.* a-year.

He was elected member for Lynn during his Solicitor Generalship, and afterwards succeeded Sir H. Finch as Attorney General.

"His business increased, even while he was solicitor, to be so much as would have overwhelmed one less dexterous; but when he was made Attorney General, though his gains by his office were great, they were much greater by his practice, for that flowed upon him like an *orage*, enough to overset one that had not extraordinary readiness in business. His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees: one had the gold, another the crowns and half-crowns, and another the smaller money. When these vessels were full, they were committed to his friend (the Hon. Roger North), who was constantly near him, to tell out the cash and put it into bags according to the contents, and so they went to his treasurer's, Blanchard and Child, goldsmiths, Temple-bar."

His next promotion was to that of Chief Justice of the Common Pleas; and the following anecdote is related of him soon after his elevation:

"There was an incident that happened not long after his lordship came into the place of chief in that Court, which though in itself and in the end of it ridiculous, yet being an affront to the Court, and in particular to the Lord Chief Justice, and by the whole bar of serjeants, all in a lump together, ought to be re-

lated, as I shall do, really as it was acted by them. It hath been the usage of the King's Bench, at the side bar below in the hall, and of the Common Pleas, in the chamber within the treasury, to hear attorneys and young counsel that came to move there about matters of form and practice. His lordship had a younger brother (Hon. Roger North), who was of the profession of the law: he was newly called to the bar, and had little to do in the King's Bench; but the attorneys of the Common Pleas often retained him to move for them in the treasury such matters as were proper there, and what they might have moved themselves. But, however agreeable this kind of practice was to a novice, it was not worthy the observation it had, for once or twice a week was the utmost calculate of these motions. But the serjeants thought that method was or might become prejudicial to them, who had a monopoly of the bar, and would have no water go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their resentment so as to be effectually remedied. At length they agreed for one day to make no motions at all, and opportunity would fall for showing the reason how the Court came to have no business. When the Court (on this dumb day, as it was called) was sat, the Chief Justice gave the usual signal to the eldest serjeant to move. He bowed, and had nothing to move; so the next, and the next from end to end of the bar. The Chief, seeing this, said, 'Brothers, I think we must rise, here is no business.' Then an attorney steps forwards, and called to a serjeant to make a motion, and after that turned to the Court and said, that he had given the serjeant his fee and instructions over-night to move for him, and desired he might do so. The Chief looked about, and asked what was the matter? An attorney that stood by, very modestly said, that he feared the serjeants took it ill that motions were made in the treasury. Then the Chief scented the whole matter: and, 'brothers,' said he, 'I think a very great affront is offered to us, which we ought for the dignity of the Court to resent. But that we may do nothing too suddenly, but take consideration at full leisure and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, attorneys, come all here to-morrow, and care shall be taken for your despatch; and rather than fail, we will hear you or your clients, or the barristers at law, or any person that thinks fit to appear in business, that the law may have its course;' and so the Court rose. This was like thunder to the serjeants, and they fell to quarrelling one with another about being the cause of this great evil they had brought upon themselves; for none of them imagined it would have had such a turn as this was, that shook what was the palladium of the coif, the sole practice there. In the afternoon they attended the Chief and the other Judges of the Court, and in great humility owned their fault, and begged pardon, and that no farther notice might be taken of it, and they would be care-

ful not to give the like offence for the future. The Chief told them that the affront was in public, and in the face of the Court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded, and then they should hear what the Court would say to them. Accordingly they did; and the Chief first, and then the rest in order, gave them a formal chiding with acrimony enough; all which with dejected countenances they were bound to hear. When this discipline was over, the Chief pointed to one to move, and which he did (as they said) more like one crying than speaking; and so ended the comedy as it was acted in Westminster-hall, called the Dumb Day."

Another incident stated by his Biographer is the following:

"At Taunton Dean, (says Roger North), he was forced to try an old man for a wizard; and for the curiosity of observing the state of a male witch or wizard, I attended in the Court, and sat near where the poor man stood. The evidence against him was, the having bewitched a girl of about thirteen years old: for she had strange and unaccountable fits, and used to cry out upon him and spit out of her mouth straight pins: and whenever the man was brought near her, she fell in her fits, and spit forth straight pins. His lordship wondered at the straight pins, which could not be so well couched in the mouth as crooked ones; for such only used to be spit out by people bewitched. He examined the witnesses very tenderly and carefully, and so as none could collect what his opinion was; for he was fearful of the jury-men's precipitancy, if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and well expressed as I ever heard spoke by any man, counsel or other; and if the Attorney General had been his advocate, I am sure he could not have done it more sensibly. The sum of it was malice, threatening, and circumstances of imposture in the girl; to which matters he called his witnesses, and they were heard. After this was done, the Judge was not satisfied to direct the jury before the imposture was fully declared; but studied and beat the bush awhile, asking sometimes one and then another question, as he thought proper. At length he turned to the justice of peace that committed the man and took the first examinations. 'And, sir,' said he, 'pray will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?'—'Then, my lord,' said he, 'I did not know that I might concern myself in this evidence, having taken the examination and committed the man. But since your lordship demands it, I must needs say, I think the girl doubling herself in her fit as being convulsed, bent her head down close to her stomach, and with her mouth took pins out of the edge of that, and then, righting herself a little, spit them into some bystander's hands.' This cast an universal satisfaction upon the minds of the whole audience, and the man was

acquitted. As the Judge went down stairs out of the Court, a hideous old woman cried, 'God bless your lordship!'—'What's the matter, good woman?' said the Judge.—'My lord,' said she, 'forty years ago, they would have hanged me for a witch, and they could not, and now they would have hanged my poor son.'"

On the death of Lord Keeper Finch, Sir Francis North succeeded to the Woolsack. It appears that Lord Rochester attempted to induce him to make application for the office in order to save the usual pension; and Sir Francis was exceedingly indignant at the artifices resorted to, by which his fair professional rewards were sought to be curtailed. The following is Roger North's account of his brother's feelings on the day he received the Great Seal:

"The evening that we went upon this errand to Whitehall, some of us stayed in expectation of his coming home, which was not till near ten; little doubting the change that was to happen. At last he came with more splutter than ordinary, divers persons (for honour) waiting, and others attending to wish him joy, and a rabble of officers that belonged to the seal completing the crowd which filled his little house. His lordship, by despatching these incumbrances, got himself clear as fast as he could, and then I alone stayed with him. He took a turn or two in his dining-room and said nothing, by which I perceived his spirits were very much roiled; therefore I kept silence also, expecting what would follow. There was no need of asking what news when the purse with the great seal lay upon the table. At last his lordship's discourses and actions discovered that he was in a very great passion, such as may be termed agony, of which I never saw in him any like appearance since I first knew him. He had kept it in long, and after he was free it broke out with greater force, and, accordingly, he made use of me to ease his mind upon. That which so much troubled him was, the being thought so weak as to take ill usage from those about the King (meaning the Earl of Rochester), with whom he had lived well, and ought to have been better understood. And instead of common friendship, to be haggled withal about a pension, as at the purchase of a horse or an ox, and after he had declared positively not to accept without a pension, as if he were so frivolous to insist and deist all in a moment, and, as it were, to be wheedled and charmed by their insignificant tropes; and, what was worse than all, as he more than once repeated, 'to think me worthy of so great a trust, and withal so little and mean as to endure such usage as was disobliging, inconsistent, and insufferable. What have I done,' said he, 'that may give them cause to think me of so poor a spirit as to be thus trifled with?' And so on with much more of like animosity, which I cannot undertake to remember. And, after these exhalations, I could perceive that by degrees his mind became more composed."

During the time he was Chief of the Common Pleas he attempted many alterations in the law. Amongst these were the Statute of Frauds, and a scheme for a General Register of Lands. One of the practical improvements effected by him was the introduction of the *ac etiam* clause in the Common Pleas writs. In the Court of Chancery he endeavoured to decrease the expenses and delays which his predecessors had been accused of tolerating too indulgently.

"His lordship, also (says Roger North), set himself to stop the superfetation of orders: and they were a subject of his daily reprehension; for the causes often came to a hearing with a file of orders in the solicitor's bundle as big as the Common Prayer Book, for communications, injunctions, publications, speedings, delayings, and other interlocutories, all dear wares to the client in every respect. But in a few terms his lordship reduced the quantities, for he was strict to the observance of his rules; and for the most part refused to make orders nisi, &c., as commonly was prayed, when notice was not given of the motion."

The following is his brother's description of his habits and mode of life during the time he was Lord Keeper:

"All his time was devoted to the business incumbent on him. He put but very little of it to his own use; and what passed in easy conversation, which was the chief of his pleasures, had still a regard to his employ, by enquiring, canvassing, and debating, with those of his society, such points as concerned the republic. He had no kind of vice or immorality within his walls; and of what sort his remissions were (for some are necessary to life) I shall give a fuller account afterwards. But it is decent here to name the chief, which was a solitary, or rather speculative, use of music, of which he commonly took a relish at his going to bed; for which end he had a harpsichord at his bed-chamber-door, which a friend touched to his voice. But he cared not for a set of masters to consort it with him. And, unless it were once under Purcell's conduct, I never knew him to use such; for there was somewhat stiff in that way that was not easy. The mornings were for the most part devoted to the justice-seat of the Chancery, either in the Court at Westminster or in the cause-room at home, during the usual periods, and not seldom in attendances upon petitions, and despatching the perpetual emergencies of the seal. His house was kept in state and plenty, though not so polite as the court-mode was. The nobility and chief gentry coming to London were frequent at his table: and after a solemn service of tea in a withdrawing room, the company usually left him; and then the cause-room claimed him, and held him in pain with causes and exceptions often till late. He had little time to himself, for he had this infirmity, that

he could not bear to make any one wait; but if his servant told him of any person, great or small, that waited without, he could not apply to think of or do any thing till he had despatched him. The interval between the business of the day and going to bed was his chief refreshment, for then his most familiar friends came to him, and the time passed merrily enough: and then it was that the court-spies found access to plumb his most free sentiments, but with small profit, for he had the same face and profession in public as he had in private; they could discover only that he was an honest man; but more of this elsewhere. His attendances at Whitehall were chiefly at solemn times, as on Sunday morning to wait on the King to chapel. That was usually a grand assembly of the court, and the great men had opportunity to speak in discourse to the King as he gave them occasion, of which his majesty was no niggard; and very excellent things said there on the one side and on the other were a high regale to such as had the advantage to stand within hearing. On the week-days, those called council-days always, and sometimes committees of council, required his lordship's attendance; and Thursday was always public; others for private business upon summons."

After the accession of James the Second, the estimation at Court of Lord Guilford became materially changed, and his enemies took advantage of every circumstance to impair his authority with the King, and his dignity as a Judge. He declined concurring with Chief Justice Jefferies in the legality of the proclamation for the payment of tonnage and poundage, and proposed a modification of the terms of the order. He also interfered in the elections in a manner displeasing to the Government. This want of subserviency was followed by a series of harassing annoyances. He was derided by the courtiers, his decrees were treated with contempt, and his advice and assistance as a Privy Councillor treated with neglect. At length his health seriously gave way; and though he afterwards rallied a little, his malady seems to have been incurable.

"His feverish disease growing upon him, his spirits, and all that should buoy a man up under oppression, not only failed, but other things of a malign complexion succeeded to bring him lower: which may be fully understood by this circumstance. He took a fancy that he looked out of countenance, as he termed it; that is, as one ashamed, or as if he had done ill, and not with that face of authority as he used to bear; and for that reason, when he went into Westminster hall, in the summer term, he used to take nosegays of flowers to hold before his face, that people might not discern his dejection; and once in private having told me this fancy, he asked me if I did not perceive it. I answered him, Not in the least, nor did I believe any one else did observe any



such thing; but that he was not well in health as he used to be was plain enough. His lordship in this state took a resolution to quit the great seal, and went to my Lord Rochester to intercede with his majesty to accept it, which had been no hard matter to obtain. But that noble lord had no mind to part with such a screen, and at that time (as he told me himself) he diverted him. But his lordship persisted, as will be made appear afterwards, by a letter. Whereupon the Lord Rochester obtained of the King, that his lordship might retire with the seal into the country; and that the officers with their concerns should attend him there, in hopes that by the use of the waters and fresh air he might recover his health against next winter, when it was hoped he would return perfectly recovered. This was indeed a royal condescension and singular favour to him."

Retiring into Oxfordshire, he lingered some time; and the following is his brother's account of the termination of his life:

"It was the opinion of the people about him, and the doctor's desire (who was the most afflicted man in the world), that Doctor Radcliffe, then in the neighbourhood, should be called in, which was done; not that his friends expected any benefit, but to satisfy some of the living, who would not be convinced. The doctor came; and by his lordship's bed-side he asked him I am sure no less than fifty questions, which were a fatigue and trouble to him, and all that were in the room. The doctor had his fee, but not the ingenuity to say what he knew, viz. that there were no hopes; but talked of the lungs being touched or not, which signified nothing. His lordship afterwards showed much discontent that he was not well attended; and if Sir Dudley North or I was absent, he called it slighting him; and we were, indeed, glad sometimes to escape for half an hour to breathe. This confirmed the approach of death, of which the not caring to be left alone is a constant symptom. He began to agonise and be convulsed; and by virtue of the doctor's cordials lived longer than was for his good. After some striving, he would lie down, and then get up again. He advised us not to mourn for him; yet commended an old maid-servant for her good will, that said, 'As long as there is life there is hope.' At length, having strove a little to rise, he said, 'It would not do;' and then with patience and resignation lay down for good and all, and expired the 5th Sept. 1685."

It appears that in presiding at the hearing of causes he endeavoured to confine the Bar to the matters in question, and to abridge that redundancy of speech which he said "disturbed the order of his thoughts." He was not an orator (observes his Biographer) as commonly understood, that is, a flourisher; but all his speech was fluent, easy, and familiar; and he never used a word for ornament, but for

intelligence merely; and those who heard him speak, though in ordinary conversation, had scarce room left to ask any explanation or enlargement.

## LEGAL OBITUARY, FOR 1834.

### JANUARY.

Mr. *Nathaniel Milne*, solicitor, the senior partner in the firm of Milne, Parry, Milne and Morris; his father was the coroner of Manchester. Mr. Milne died at his house in Brunswick Square, at the age of 57.

Mr. *Andrew Edge*, of Essex Street, solicitor, Clerk of the Outer Treasury in the Court of King's Bench, and Filaser for the counties of Essex and Monmouth.

Mr. *Thomas Pierce Denison*, solicitor, formerly of the Inner Temple.

Sir *William Macleod Bannatyne*. He was admitted advocate at the Scottish bar, on the 22d of January, 1765, and acquired the character of a sound and able lawyer. On the 16th of May, 1799, he was promoted to the bench, and took his seat as Lord Bannatyne, which he resigned in 1823.

Mr. *James Lowe*, jun., of Liverpool, solicitor.

Mr. *Richard Bremridge*, of the Temple, solicitor.

### FEBRUARY.

Mr. *John Moysey Bartlett*, solicitor, one of his Majesty's commissioners of taxes.

*Isaac Espinasse*, Esq., barrister at law, a bencher of Gray's Inn, and one of the Justices of the Peace for Kent.

### MARCH.

Mr. *Edward Duke*, of Austin Friars, solicitor.

Mr. *Vincent Langworthy*, of Ilminster, solicitor.

Mr. *William Bull*, of Aylesbury, solicitor.

*John Lewis*, Esq., barrister at law, and one of the Magistrates for the counties of Carmarthen and Pembroke.

Mr. *Thomas Willington*, of Tamworth, solicitor, and town clerk.

*C. J. Swann*, Esq., barrister at law; the first secretary to the Real Property Commissioners.

### APRIL.

Mr. *Edmund Bacot*, solicitor, and clerk to the society of Apothecaries.

*John Edwards*, Esq., of the Inner Temple, barrister at law.

Mr. *George Dew*, of Salisbury, solicitor.

MAY.

*George Heald, Esq.*, King's counsel, and a bencher of Gray's Inn. For a memoir of his life, see 8 L. O. 97.

JUNE.

*Mr. Richard Wilson*, formerly of Lincoln's Inn Fields, solicitor, and one of the secretaries of Lord Eldon.

JULY.

*Peter Alley, Esq.*, barrister at law. See a memoir, 9 L. O. 66.

*Mr. Edward Daniel*, of Ramsgate, solicitor.

AUGUST.

*John Clervaux Chaytor, Esq.*, barrister at law.

*Mr. James Haddan*, of Angel Court, solicitor.

*Mr. John Thomas*, of Crane Court, solicitor.

SEPTEMBER.

*Mr. Richard Woodhouse*, of the Temple, solicitor to the Law Life Assurance Society.

*Mr. W. Lewis Newman*, solicitor to the Corporation of London.

*Mr. George Bennett*, of Banwell, solicitor.

*Mr. Justice Jebb*, one of the Judges of the Court of King's Bench in Ireland. He was called to the Irish bar 1787, and in 1818, was appointed fourth Judge of the Court of King's Bench.

*Mr. John Vickerman*, of Gray's Inn, solicitor.

The Right Hon. Sir *John Leach*, Knt., Master of the Rolls; a Privy Councillor; a Bencher of the Middle Temple, and L L. D.

*Mr. James Smith*, of Barnard's Inn, solicitor, in his 50th year.

OCTOBER.

*Mr. W. B. Baldwin*, of Ringwood, solicitor.

NOVEMBER.

*Mr. Peter William Henry Hicks*, of Northampton, solicitor.

*Edward Plunkett Burke, Esq.*, second Judge of the St. Lucia Court.

DECEMBER.

*John Percy Savel, Esq.*, of the Inner Temple, barrister at law.

*Richard Whitcombe, Esq.*, barrister at law, of the Oxford and South Wales circuit, and one of the Corporation Commissioners.

The Hon. *P. H. Abbott*, second son of Lord Colchester, of the Oxford circuit and Chancery bar.

*Mr. William Green*, of Salisbury Square, solicitor to the Commissioners of Woods and Forests.

*Mr. Robert Strong*, solicitor, formerly of Lincoln's Inn.

*Thomas Waterhouse Kaye, Esq.*, barrister, of the Middle Temple.

The dates of the decease of the following Gentlemen have not been ascertained:

*Mr. William Euclid Ball*, of Hereford, solicitor.

*Mr. Arthur Clarke*, of Bishopsgate Church-yard, solicitor.

*Mr. Bury Hutchinson*, of Russell Square, solicitor.

## PUBLICATIONS OF THE RECORD COMMISSIONERS.

THE following extracts are made from Sir F. Palgrave's Essay upon the Original Authority of the King's Council, published by the Commissioners of Public Records, in order to explain the nature and importance of the ancient parliamentary petitions, as materials for the Constitutional History of England.

We have arranged the extracts under the several heads to which they relate, in order that the reader may more readily perceive the subjects treated of.

### DISTINCTION BETWEEN EQUITY AND COMMON LAW.

Amongst the many peculiarities which characterise our legal institutions, there are none more remarkable than those offered by the Courts of "Extraordinary" or "Equitable" jurisdiction, when distinguished from the Courts of *Common Law*.

It must appear a singular anomaly to a foreigner, when he is informed that our English tribunals are marshalled into opposite, and even hostile ranks: guided by maxims so discrepant, that the title which enables the suitor to obtain a decree without the slightest doubt or hesitation, if he files a bill in equity, ensures a judgment against him, should he appear as plaintiff in a declaration at common law. And exercising their respective jurisdictions by means of forms and pleadings, which have as little similarity as if they existed amongst nations whose laws and customs were wholly strange to each other.

Equitable or extraordinary jurisdiction, now vested in the Courts of Chancery and Exchequer, and in some inferior and local Courts, modelled after the superior tribunals, and formed by their example, was anciently much more extensive. Nor was it confined, as now, to the discussion of rights of property. A jurisdiction entirely analogous in principle and

in procedure, but taking cognizance of crimes and misdemeanors, was claimed and exercised by the *Council* and the *Star Chamber*, until the authority of these tribunals yielded to the voice and wishes of the Commons, when they gained a victory for which they had contended during centuries. From the first time that the Courts of extraordinary jurisdiction appeared to assume a separate existence, distinctly disjoined from the supreme judicial authority, they were jealously watched by the popular branch of the legislature. The history of Courts of Equity thus becomes an important part of the history of the Constitution, and connected in every respect with the general polity of the realm.

#### PUNISHMENT OF CRIMES.

According to the ancient Common Law of England, as it is declared by *Magna Charta*, no freeman was to be taken, imprisoned, disseised, or outlawed, unless by the lawful judgment of his peers: or by the law of the land.

The first species of jurisdiction designated by a term which has become so familiar to us, seems, in the reign of John, to have been vested in the Baronage, or in the members of the "*Curia Regis*." The second species of trial included many modes of dispensing justice.

*Open delict*.—When the transgressor was seized under such circumstances as to leave no doubt of his guilt in the minds of the bystanders: then no accuser was required by the common law, and no defence was allowed to him. The corpse lying at the feet of the murderer, testified his crime;—no witnesses were called,—no other proof was given of his misdeed. The thief bearing his spoil, was beheld by his pursuers without respite or delay; and the bloody hand of the slayer of the deer, drew forth instant retribution from the guardians of the forest. Punishments thus inflicted, bore the character of revenge, rather than of legal adjudication. They often proceeded from the authority of the landlords, who had inherited the Saxon *sokes* and jurisdictions, or of the municipal communities to whom the same franchises appertained.

But the principle of taking judicial notice of open and notorious crimes and misdemeanors was long recognized in other Courts, even in those high tribunals where such vindictive justice was in danger of becoming subservient to the worst motives and passions. Offences against the public peace, the state, and the crown, were not unfrequently judged by acclamation: and the condemnation of the criminal, losing its moral efficacy, appeared to be the result either of despotic power or party violence.

*Inquest*.—When the offence was manifest, or when the summary punishment of open delict was delayed, the accused was put upon his *deliverance* at common law, either by the appeal of the injured party, or by the presentment of an *inquest*.

In the first case he might defend himself by his body, and meet his opponent in the field; or he might elect to abide by the testimony—the *testimony*, not the *judgment*—of the jury, summoned from the township or neighbourhood where the deed was done. In the second

he might undergo the ordeal trial. They tempted Providence by expecting that a miracle would be worked for the manifestation of truths susceptible of investigation by the exertion of the talents which have been given to mankind. But this strange custom can be extenuated, though not justified, by recollecting that the *inquest* was the declaration of witnesses who had positively sworn to the fact; it was equivalent to a conviction. The subsequent trial, (or what we now call the petty or traverse jury,) was allowed to the accused from motives of humanity, and for the purpose of giving him one chance more.

If the culprit declined the "*Judicium Dei*," he put himself upon the country, which became the only mode of obtaining an acquittal after the ordeal was abolished or disused, except in certain cases where compurgation was allowed.

The Commonwealth was knit together by the law of the "free borough." This was a system of mutual surety, and also of mutual espial, for it rendered every man answerable for his neighbour; and consequently compelled him to watch his neighbour's acts with suspicion and jealousy. When blood was shed, the nearest townsmen were attached, and an account was required from them. The township and the hundred might be amerced for the transgressions of those who were within their pledge.

*Outlawry*.—He who refused to appear in Court, after lawful summons, broke the compact which bound him to the commonwealth: he became an outlaw. He had spurned the protection of the social community, and he obtained none. His property was forfeited: he bore a "wolf's head," and he might be slain with impunity. But outlawry could not be pronounced unless by the solemn judgment of the shire or the burghmoot: nor until the offender had been oftentimes required to come in, and abide the sentence of the law.

*Frankpledge*.—The punishments of the law were rigorous. Occasionally they were mitigated by that yearning to do justice in mercy, so often occasioning a painful struggle in the legislator, who has subjected himself to duties which he regrets to perform. If the criminal had taken sanctuary, he might save his life by abjuring the realm; and the white wand which he bore in his hand whilst he was journeying to the sea shore, protected him against all further harm. Some lives were saved by the "benefit of clergy," which substituted a severe and painful imprisonment for capital punishment.

*Appeal*.—An appeal, whether of theft or murder, could not be released or pardoned by the King. But the King's Justices, even in early times, greatly discouraged this vindictive remedy. They required the utmost nicety in the pleadings; and by allowing the defendant to avail himself of every technical objection which he could raise, the appellor was easily sent out of Court. A protection was also afforded against the abuse of the process by the imprisonment which was inflicted upon him in case of a false appeal.

## REAL ACTIONS.

In real actions, the protection of the tenant was strictly guarded by the forms of the common law. These were not destitute of regulations intended to prevent vexatious litigation. The plaintiff found pledges to prosecute, and if he failed in his suit, he was amerced for his false claim. An enumeration of the modes of process would be tedious. It is sufficient to observe, that the defendant was summoned into Court by writ original, under the King's great seal; and that when the cause could not be decided by such kinds of written evidence as the law admitted to be conclusive, the trial was either by battle or by the testimony of the country.

## CHARACTERISTICS OF THE COMMON LAW.

From this hasty outline, it will be collected that the administration of the common law was entirely Teutonic. Perhaps the "Justice" or the "Seriaunt" might borrow many an argument from the Code or the Digest; he would support his opinion by a quotation from the "Written Reason" of Justinian, or amuse himself with the racy subtleties of Pisa or Bologna; but all the forms and the practice of the civil law, in relation to evidence, were rejected. Englishmen were proud of their jurisprudence. The origin of their common law was obscured by the mist of ages. They invoked the revered name of Alfred, and the hallowed memory of the Confessor, the supposed founder of the system. Considered in relation to its effects, it was not oppressive upon the people: and the general peace of the kingdom, allowing for the state of society, was well preserved, or at least better than in any coeval state in Europe.

Acting by established and acknowledged rules, the common law might be harsh, but it was not despotic; and the principle of adopting *precedent* as the guide of judicial decisions, gave stability and vigour to the administration of justice. Speculative wisdom never can devise a code, capable of providing for the infinite variety of cases arising out of the transactions which take place, even in the most simple state of society. A system of jurisprudence founded upon precedents, admits the engrafting of other precedents as they arise, and this will form the nearest approach to a perfect code; because, although no *two* cases are ever exactly similar, still, no *one* new case ever happens, which has not had a forerunner in some earlier case, so nearly analogous to it as to afford a rational rule to the tribunal.

## POPULAR AND ROYAL JURISDICTIONS.

The common law jurisdiction may be considered as emanating from the people. Not that our institutions were democratic: but the folk-moots—the courts of the hundred, and the borough and the shire, and those institutions upon which jury trial was grounded—have descended from that distant age when the name and office of King were alike unknown to the rough German. And they retained much of their pristine spirit and form, much also of that rudeness which belonged to an

early, and in some respects, barbarous state of society.

But the royal jurisdiction possessed a far different character. The Anglo-Saxon sovereign, assuming the proud title of "*Basileus*," had become in theory the supreme legislator of his people: he was the sole fountain of remedial justice. The defects, the abuses, and the corruptions of the inferior tribunals, were to be redressed by that sovereign prerogative, which had been given to him for the common weal. And whenever the subject failed to obtain "*right*" in the hundred or the shire, he was to seek relief from the chief magistrate of the community.

## ORIGIN OF WRITTEN PROCESS.

Whether in the administration of justice or in transactions of state, the king's will and pleasure might be testified equally either by *parole* or in writing. It was not absolutely necessary that the command should be couched in the shape of a *writ*. But documentary process would rapidly gain ground. A formal instrument, running in the king's name, was indispensable when the command was sent to a distant shire; a verbal message could not be authenticated. The precept was to be engrossed upon parchment; and hence a considerable portion of the affairs belonging to the sovereign would always be entrusted, in practice, to the King's Secretaries or Clerks, and to their chief—the Chancellor.

Without depreciating the cultivation of our ancient monarchs, we readily believe that few of them could understand the language in which the majority of legal instruments were composed; and the care which provides a form of the coronation oath in French, to be taken by the king who was *illiterate*, or ignorant of Latin, shews how slender a portion of *clerkship* was usually expected from the sovereign. So long as the administration of justice was confined to the declaration of well-known customs, expounded by natural equity, the deficiency of the acquirements of the chief magistrate did not necessarily compel him to call in the aid of the *Clerks* for the administration of justice. But when the process became settled, and the law abstruse, the advice of these assistants would interfere with all those executive departments of the law in which the name of the sovereign was employed.

According to the Anglo-Saxon usage, the party who executed a charter, confirmed the instrument by subscribing the sign of the cross: and the sovereign and his subjects followed the same rule. On the continent, the monarchs imitated the diplomacy of Rome and Byzantium. The *monogram*, in whose interlaced outline we discover the letters which form the name of the king or the emperor, authenticated the precept or the donation.

## USE OF SEALS.

The seal of Charlemagne is imprinted in addition to his signature. Though the seal does not uniformly apply as affixed to such documents, the Teutonic rulers adopted it at a very early period. The original signet of Chil-

Merle, being a rude effigy of the royal owner, attired in the chlamys of Augustus, which was discovered in his tomb, yet exists to satisfy the curiosity of the antiquary; and the Barbaric codes recognize the seal of the "Count" and the "Duke" as the testimonies of their commands. A charter of Offa, by which the King of Mercia conveys various townships in England to the abbey of St. Dennis, has been alleged as a proof that a similar custom was followed by the Anglo-Saxons; but before the reign of Ethelred, we cannot discover any satisfactory instance of the employment of the royal "seal," as the legal authentication of the writ which conveyed his commands.

The seal, however, gradually came into use,—being first appended to writs and mandates, and afterwards to charters: for the latter continued to be subscribed by the cross long after the seal became the inseparable accompaniment of the writ; and we may easily discover a reason for this difference. The charter was usually executed in the presence of the Great Council of the nation, and the notoriety of the transaction would afford, in most cases, a sufficient authentication. But the writ which was transmitted to the distant city, might be easily forged; and hence the necessity for the solemn confirmation imparted by the seal, which could less easily be imitated by the ordinary skill of the falsary, than the mere pen-mark of the Sovereign.

#### ESTABLISHMENT OF THE CHANCERY.

At an early period of English History the seal had passed into the custody of the Chancellor. Under Edward I, the Chancery, then a public board or public office, and not a court of justice, consisted of the Chancellor, and of certain honest and discreet clerks, whose duty, according to Fleta, consisted in hearing and examining the petitions of complainants, and in affording them due remedy by the King's writ. Being of the clergy, they were styled and addressed as "*magistri*," by which title their successors are now known. They were also designated as *clerici de prima forma*, or *de primo gradu*. As part of the King's household, they received their robes and fees from him, from whence they were also called *clerici ad robas*. Besides these, there were six other clerks, whose business it was to engross the writs, and they were assisted by certain other junior engrossing clerks, who acted in the name and on the responsibility of their principals.

The officers of the Chancery lived or lodged together in an inn, or *hospitium*, which, when the King resided at Westminster, was near the palace, or perhaps a part of it. The writs were sealed on the table of marble stone which stood at the upper end of the hall, and there they seem to have been delivered out to the suitors. When the King travelled, he was followed by Chancellor, Master, Clerks, and records. On those occasions it was usual to require a strong horse, able to carry the rolls, from some religious house bound to furnish the animal; and at the towns where the King

rested during his progress, an *hospitium* was assigned to the Chancery. I mention these particulars because they shew the manner in which the whole establishment was attendant upon the King.

#### NATURE OF WRITS.

Writs were of various natures, and the classes into which they were divided are noticed by Fleta and Bracton, and by the anonymous author of the treatise entitled "*Brevia Placitata*." But being familiarly known to these writers and their contemporaries, the forms of proofs are not very clearly defined: and we must often have recourse to the commentary afforded by records.

Some writs were entitled "*de cursu*," and these seem to have been issued by the Chancery, upon the applicant finding pledges, and swearing to the truth of the allegation: perhaps, indeed, such an affidavit was required before the issue of all other writs. It appears also, that there were persons styled messengers of the Great Seal, and that they delivered the writs to suitors residing in the shires.

The tenor of the writs *de cursu*, according to Fleta, could not be altered but by the legislature; and it is said that the precedents by which the clerks were guided were contained in a roll or book called the Register of the Chancery. The writs *de cursu* were clearly distinguished from other writs early in the reign of Henry 3. In the 12th Henry 3, letters patent (which are not upon the roll) were transmitted to Ireland, together with the forms and precedents of all the writs *de cursu* then in use, being fifty-one in number, and which it was ordered should thenceforth pass under the Seal of the Justiciar to issue the following writs—*de recto—mort dauncestre—novel disseisin—de nativis et fugitivis*—and, *de divisione faciendis*. Perhaps these were the only writs then considered as writs *de cursu*: and the others had become so in the period intervening between the two patents. For it seems that the register obtained its first sanction from constant usage, rather than from any legislative enactment, of which no traces can be found.

The practice of the Chancery became binding by custom, like every other part of the common law. Whether any of the various collections bearing the title of the *Registrum Brevium*, now extant, can be considered as the authentic and standard register, is a difficult question, and at all events new writs *de cursu* must have continually increased its bulk. Most of those founded on the Statute of Merton were drawn by William de Ralegh, one of the Justices of the Curia Regis, as appears, partly from Bracton, and partly from an ancient and very curious MS. of the register, compiled towards the close of the reign of Henry 3. In the early part of the reign of Edward I, it was the practice to enter upon the close rolls such new writs as were founded upon new statutes; and these must have become writs *de cursu*. But it was considered that the clerks could not form new writs *de cursu* without the au-

thority of Parliament, either express or implied: and therefore if they could not find an exact precedent in the register, they had no power to adapt the general form to similar cases,—“happening under the like right, and needing the like remedy.” A frequent failure of justice was caused by this restriction, which was partly remedied by Westminster the second. The statute empowered the clerks, when necessity required, to compose writs “*in consimili casu*,” and if they could not agree, a statement of the case was to be brought before the next Parliament, when a new writ was to be framed by assent of the learned in the law; a proceeding, however, to which they rarely had resort. Thus, the power of issuing writs *de cursu* was, except in extraordinary cases, vested in the Chancery.

**BARRISTERS CALLED,**  
*Hilary Term, 1835.*

**LINCOLN'S INN.**

John Alexander Johnston, Esq.  
Alfred Baldwin, Esq.  
James Kennedy Blair, Esq.  
Robert William Burn, Esq.  
Charles Henry West, Esq.  
Henry Richard Babbington, Esq.  
John Jefferys, Jun., Esq.  
Augustus Langdon, Esq.  
James Mitchell, Esq.  
Thomas Marten, Esq.  
Arthur James Jones, Esq.  
Hon. Henry Bannister.  
Charles Otter, Esq.  
Joshua Ryland Masterman, Esq.  
William Cayley, Esq.  
John Peter De Gix, Esq.

**INNER TEMPLE.**

Robert Bayley, Jun., Esq.  
Graham Francis Moore, Esq.  
Edward Theophilus Hood, Esq.  
Henry Strettell Chadwick, Esq.  
Frederick Woodham Nasle, Esq.  
Calmady Pollexfen Hamlyn, Esq.  
Douglas Denon Heath, Esq.  
James William Colville, Esq.  
Edward Turner Boyd Twisleton, Esq.

**MIDDLE TEMPLE.**

William Howard, Esq.  
Robert Hillier Rickards, Esq.  
John Cowley Fisher, Esq.  
Richard Holland Ash, Esq.  
Alfred Charles Bridge, Esq.  
Augustus Brown Abraham, Esq.  
Richard Brinsley Dowling, Esq.  
George Wingrove Cooke, Esq.  
James Langton Clarke, Esq.

**GRAY'S INN.**

Perceval Banks, Esq.  
John Brown Terrewest, Esq.

**INCORPORATED LAW SOCIETY.**

**MEMBERS ADMITTED,**  
*February, 1835.*

Benjamin Hope, Wells, Somersetshire.  
Robert Cook, Bath.  
William Gibbs, 19, King's Road, Bedford Row.  
Charles Tennant, 2, Gray's Inn Square.  
Charles John Shebbeare, Symond's Inn, and Clapham.  
David Harrison, Bond Court, Walbrook.  
Christopher Crouch, 11, Southampton Buildings.  
Richard Hollier Atkinson, 37, Southampton Buildings.  
Thomas Selby, Town Malling, Kent.

**ATTORNEYS TO BE ADMITTED,**  
*Easter Term, 1835.*

**KING'S BENCH.**

*Clerks' Names.*

Ackroyd, Robert, the younger, 38, Nelson Terrace, Stoke Newington.  
Allan, Robert Munro, Charlotte Row, Bermondsey.  
Annealey, Martin, Regent's Square.  
Arnold, Joseph John, 6, Devonshire Place, Balham Hill, Surrey.

Balchin, George, 39, Coleman Street.  
Bedford, Thomas John, Brighton, Sussex.  
Beene, Richard White, Swansea, Glamorgan.  
Beisly, Sidney, 3, Lincoln's Inn New Square.  
Bell, John Penrice, 11, New Square, Lincoln's Inn.

*To whom articulated.*

John Jaques, Barnard's Inn.  
William Kirkley, Newcastle-upon-Tyne, deceased; assigned to John Fenwick, Newcastle-upon-Tyne.  
Henry Sweeting, Huntingdon.  
Allen Pering, 5, Lawrence Pountney Place.  
William Harry Calhoun, Arundel, Sussex.  
William Furner, Brighton.  
John Jackson Price, Swansea.  
James Currie, same place.  
Messrs. White and Borrett, Frederick's Place, Old Jewry.

*Clerks' Names.*

Bell, John, 9, Goulden Terrace, Islington.  
 Bernard, John Frederick the younger, 27,  
 Newington Place, Kennington.  
 Beswick, John Kendall, 1, Chapel Street, Bed-  
 ford Row.

Binney Edward William, 5, Princes Street, Bed-  
 ford Row.

Bowes, Thomas the younger, Darlington, Dur-  
 ham.

Bretherton, James, Gloucester.

Broderip, William, 1, Gower Street, Bedford  
 Square.

Brown, Edmund Hunter, 18, Green Terrace,  
 Clerkenwell.

Caistor, William Yates, Manchester.

Calvert, Thomas, Doncaster.

Carter, Frederic Roger, St. David, within the  
 Co. of City, Exeter.

Chambers, John, Sheffield, York.

Charlton, Nicholas, 7, Furnival's Inn.

Clark, William Henry Andrew, King's Bench  
 Walk.

Clarke, James Smith, Coleford, Gloucester.

Clarke, Joseph, Coventry.

Collis, Henry, Birmingham.

Compigné, Horatio, I, New Square, Lincoln's  
 Inn.

Cookson, Daniel, 13, Howard Street, Norfolk  
 Street, Strand.

Cooper, William Frederick, 16, St. John's Wood  
 Road, Regent's Park.

Coppock, James, Soley Terrace, Pentonville.  
 Covinton, William Arthur, 7, Wood Street,  
 Westminster.

Craddock, George William, Newark-upon-  
 Trent, Nottingham.

Creasy, Albert Thomas, 27, South Audley  
 Street.

Crofts, John, 19, Chancery Lane.

Crookall, John, Manchester.

Dally, Thomas Yarrall Johnson, Arundel, Sus-  
 sex.

Dickson, Richard, 4, New Street, St. Mary,  
 Newington.

Dowding, Edwyn, 10, New Square, Lincoln's  
 Inn.

Edmond, John, Swansea.

Edwards, Henry, 17, Red Lion Square.

Eminson, Richard, Town and County of King-  
 ston-upon-Hull.

Farnworth, John Kay, Manchester.

Farrow, Jonathan, Lincoln's Inn Chambers,  
 Portugal Street.

Fitzpatrick, Henry James, Cranbourn Street,  
 Leicester Square.

Forster, Charles Millett, 17, Compton Street  
 East, Brunswick Square.

*To whom assigned.*

George Allison, Richmond, York.  
 William Vizard, 51, Lincoln's Inn Fields.

James Beswick, Birmingham; assigned to  
 James Wells Taylor, 28, Great James Street,  
 Bedford Row.

Wotton Byrchinshaw Thomas, Chesterfield,  
 Derby.

Thomas Bowes, the eldest, same place.

Thomas Smith, same place.

Edward Hosier Williams, Lincoln's Inn.

George Stallard, Bath.

William Slater, Manchester.

Robert Baxter, Doncaster.

William Hobson Furlong, same place.

Samuel William Turner, Sheffield.

Messrs. Bell and Head, Hexham, Northum-  
 berland.

Robert Thorp, Alnwick, Northumberland.

William Roberts, same place.

Benjamin Dickens, Coventry, deceased; as-  
 signed to Benjamin Eaton, Coventry.

William Wills, Birmingham.

David Compigné, Gosport, Hants.

Joseph Frank, Stockton, Durham.

Joseph Turnley, Westerham; assigned to Fre-  
 derick Smith, 1, King's Arms Yard; assign-  
 ed to Charles Edward Cutton, 29, Ironmong-  
 er Lane, Cheapside.

Roger Gadsden, Furnival's Inn.

Richard Pittman, Paddington Green.

William Edward Tallents, same place.

Frederick Cooper, Brighton.

William Scott, Leeds.

William Ormrod Pilkington, Preston, Lan-  
 caster.

Richard Dally, of Chichester and Bognor,  
 assigned to William Duke, Arundel.

Thomas Glover Kensit, Skinner's Hall.

Frederick Dowding, Bath; assigned to Hea-  
 ry Whittaker, Lincoln's Inn.

John Jackson Price, Swansea.

Benjamin Russell Baker, Andover, Southamp-  
 ton.

George White, Grantham, Lincoln.

William Slater, Manchester.

Alfred Barnard, Norwich; assigned to William  
 Jones, Crosby Square.

John Elkins, 59, Newman Street; assigned to  
 Daniel Stone, Castle Street; assigned to  
 William Phelps, 41, Little Queen Street.

Charles Millett, Cricklade, Wilts; assigned to  
 Henry Davis, Bristol; assigned to William  
 Edward Davis, Bristol; assigned to Robert  
 Gamlen, Gray's Inn.

*Clerks' Names.*

Foster, John Lyon, 1, Gray's Inn Square.

Fry, Bruges, 80, Cheapside.

Gaisford, William, 15, St. Paul's Terrace, Ball's Pond.

Gibbs, Griffith, Llanelly and Swansea, Carmarthen.

Giles, Henry Edward Broissant, 428, Strand.

Gill, John, the Younger, East Dereham.

Glendinning, James, Newcastle-upon-Tyne.

Goddard, Alfred, 22, Edmund Place, Aldersgate Street.

Grange, Richard, Charles St., Portland Terrace, Regent's Park.

Grayling, Francis Thomas, 22, Sherrard Street, Golden Square.

Grueber, Thomas, 33, Southampton Row, Russell Square.

Gunning, Charles, 10, Hunter Street.

Hand, Robert William, of the Borough of Stafford.

Hebson, Thomas, Penrith, Cumberland.

Hedges, Charles, Wallingford, Berks.

Hensman, George, 12, Paragon, Blackheath.

Hibbert, Titus, Manchester.

Hodgson, Thomas Richard Tucker.

Holbeche, Francis, 14, Duke Street, Adelphi.

Holt, William John, Philpot Street, Bedford Square.

Hudson, John Godfrey Bellingham, 132, Oxford Street.

Hampage, Henry Job, 6, Alfred Place, Bedford Square.

Ings, Thomas Godden, Devizes.

Jones, Alfred, Size Lane.

Jones, Thomas Moreton, 38, Castle Street, Holborn.

Lacy, Henry, 23, York Street, Gloucester Place, Mary-le-bone.

Landor, Edward Wilson, Rugeley, Stafford.

Langborne, Nathaniel, 14, Kenton Street, Brunswick Square.

Law, William Farmery, 3, Verulam Buildings.

Lazonby, William Calthwaite, near Penrith, Cumberland.

Lewis, George, Gloucester.

*To whom articulated.*

John Beedham, Kimbolton, Huntingdon; assigned to James Jeremiah Byles, Chertsey, Surrey; assigned to Nathaniel Stevens, 1, Gray's Inn Square.

Robert Parker, Axbridge, Somerset.

John Bush, Bradford, Wilts.

John Davies, Swansea; assigned to Meyler Gibbs, Llanelly and Swansea.

Thomas Mann, Andover; assigned to James Goren, Orchard Street; assigned to Edward Bousfield, 12, Chatham Place.

William Drake, same place.

George Anthony Lambert, same place.

Charles Deane, Lincoln's Inn Fields; assigned to John Henry C. Russell, Sittingborne, Kent.

James Barnaby Mills, Hatton Garden; assigned to James Goren, Orchard Street, Portman Square; assigned to George Metcalfe, Gray's Inn Square.

Richard Minter Mount, Canterbury.

Montague Edward Smith, Torrington Square; assigned to Thomas Tilson, the Younger, 29, Coleman Street.

Samuel Batchellor, Bath.

Frederick White, of Wellington, Somerset.

Thomas Dobson Bleaymire, Penrith, aforesaid.

John Allnatt Hedges, same place.

Boswell Hensman, 7, Bucklersbury; assigned to Peter Bruce Turner, 8, Basing Lane.

Thomas Woodcock Winstanley, same place.

Robert Grace, Liverpool; assigned to Charles Bardwell, Liverpool; assigned to William Greatwood, Birmingham.

Thomas Holbeche, Sutton Coldfield, Warwick; assigned to Edward Thomas Cardale, Bedford Row.

William Ewington, Threadneedle Street; assigned to Roger Staples Fisher, Aldergate Street.

John Smart, Inner Temple.

Richard Wyatt, Stroud, Gloucester.

Edward Ings, Devizes; assigned to James Weekes James, Devizes.

William Brodrick, Bow Church-Yard.

John Williams of Llanfyllin, Co. Montgomery.

Robert Blackmore, St. Martin's Place, Trafalgar Square; assigned to John Bethel, 14, Lincoln's Inn Fields.

Walter Landor, same place.

James Walker, Whitby, York; assigned to Isaac Henry Tyas, 13, Beaufort Buildings, Strand.

Charles Bonner, Spalding, Lincoln.

Thomas Dixon, same place.

George Worrall Counsel, of Gloucester; assigned to Richard Hodges Carter, Gloucester.



*Clerks' Names.*

*To whom attested.*

Lewis, Thomas Price, 4, Stone Buildings.	Henry John Whitaker Cooper Roger Hayt, Tewkesbury, Gloucester.
Lingard, John Rowson, Heaton Morris, Lancaster.	John Vaughan, same place.
Littlewood, William Sheppard, Doncaster, York.	Robert Baxter, Doncaster, now with Messrs Hilliard and Hastings, 2, Raymond Buildings, Agents of Mr. Baxter.
Lucy, Henry, Ledbury, Hereford.	Robert Phelps, same place.
Marks, George, Furnival's Inn.	Flavius Kingsford Drawbridge, Arundel Street, Strand; assigned to John Barber, Furnival's Inn.
Marsden, George William, 36, Queen Street, Cheapside.	Archibald Campbell Russell, Lent Street, Southwark, deceased; assigned to Joshua Russell, same place; assigned to Thomas Pearson, Pump Court.
May, James Bowen, Bedford Street, Bedford Square.	Richard George Barton, New Windsor; assigned to John Scard, Bedford Street, Bedford Square.
Merivale, Reginald, Woburn Place, Russell Square.	Archer D. Croft, Lincoln's Inn Fields.
Meteyard, William Pearson, 2, Norfolk Street, Strand.	William Rymer, Manchester, deceased; assigned to Edmund Haworth, Bolton-le-Moors.
Milne, Oswald, the younger, of Manchester.	Oswald Milne, the elder, same place.
Mogg, William Henry, Bristol.	Henry Andrews Palmer, same place.
Moore, Frederic Harry, Blandford Forum, Dorset.	George Moore, same place.
Moore, Edward Francis, Blandford Forum, Dorset.	George Moore, same place.
Morphett, George, 4, Duncan Terrace, Islington.	Nathaniel Morphett, 3, Bream's Buildings.
Morrant, Harry, 428, Strand.	Thomas Mann, Andover; assigned to Edward Bousfield, 12, Chatham Place, Blackfriars.
Mortimer, John, Lewisham Hill, Kent.	William Henry Allen, Clifford's Inn.
Mortlock, Henry, 4, Raymond's Buildings.	John Deverell, Raymond Buildings.
Morton, John Edward, Rochester.	John Coates, 1, Pump Court; assigned to William Long, Windsor, Berks.
Nicholls, William Devereux, Bernard Street.	Matthew Dobson Lowndes, Liverpool.
Orchard, Thomas, jun. 15, Hatton Garden.	Thomas Orchard, sen. Hatton Garden.
Owen, Owen, 1, John Street, Bedford Row.	William Evans, Haverfordwest.
Owen, William Herbert, Llandovery, Carmarthen.	David Lloyd Harries, same place.
Palin, Richard, Shrewsbury, Salop.	Jonathan Scarth, Shrewsbury.
Parkes, Thomas William, 17, Mabledon Place, Burton Crescent.	William Parkes, 10, South Square, Gray's Inn.
Parkinson, John, Bury, Lancaster.	Samuel Woodcock, Bury.
Parsons, George, 10, Adam Street, Adelphi.	John Broughton, Peterborough, Northampton.
Parsons, Thomas, 25, Norfolk Street, Strand.	William Harrison Ainsworth, 12, Grafton Street, Piccadilly; assigned to George Delmar, 25, Norfolk Street.
Peirson, James, Islington.	Nathaniel Milne, late of the Inner Temple, London, deceased.
Perry, William, 3, Sidmouth Street, Gray's Inn Road.	Wilson Perry, Whitehaven, Cumberland.
Plaskitt, William, Market Rasen, Lincoln.	Thomas Rhodes, same place.
Pollitt, Thomas, Davenport Fold Harwood, near Bolton, Lancaster.	Robert Parker, Bury, deceased; assigned to Thomas Parker, Bury, Lancaster.
Preston, Thomas Baynes, Skipton, York.	Thomas Brown, Skipton.
Price, Henry L., Ravenstone, Leicester.	Thomas Hallen, Kidderminster, Worcester; assigned to Edward Smith Bigg, Southampton Buildings.
Price, Arthur Munton, 7, Staple Inn.	Charles Smale, Bideford, Devon.

[To be continued.]

## LIST OF NEW PUBLICATIONS.

**The History of the Boroughs and Municipal Corporations in the United Kingdom, from the earliest Period to the present Time, with an Examination of Records, Charters, and other Documents, illustrative of their Constitution and Powers.** By H. A. Merewether, Serjeant at Law, and A. I. Stephen, Esq. Barrister at Law. In 3 Vols. royal 8vo. Price 4l. 14s. 6d.

**Concise Forms of Wills, with Notes.** By W. Hayes and J. Jarman, Esqrs. 8vo.

**Smith's View of an Action at Law.** 8vo.

**The Central Court Act, with Notes.** By M. Prendergast, Esq. 8vo.

**Reports of Cases in the King's Bench Practice Court.** By A. S. Dowling, Esq. Michaelmas and Hilary Terms, 5 W. 4. Vol. 3, Part 2. Price 6s.

**A Treatise on the Law of Limitation and Prescription.** By D. Gibbons, Esq. Price 7s. boards.

## BANKRUPTCIES SUPERSEDED.

From Jan. 20, to Feb. 17, 1836, both inclusive, with Dates when gazetted.

Denman, Edward, Mark Lane, Watch Manufacturer. Feb. 17.  
Hauker, James Burrows, Montagu Street, Portman Square, Plumber, Painter, & Glazier. Feb. 18.  
Ledgard, Edward, Mirfield, York, Seed Crusher & Oil Merchant. Feb. 10.  
Morgan, Thos. Bigne, Hereford, Timber Merchant. Jan. 30.  
Smith, John Davidson, Norwood, Surrey, Esq. (described in the Fiat "Stable Keeper.") Feb. 6.  
Small, Alex. Duncan, Napsbury, Hertford, Dealer in Cattle. Feb. 13.

## BANKRUPTS.

From Jan. 20, to Feb. 17, 1836, both inclusive, with Dates when gazetted.

Argent, Frederick Shadrak, Fetter Lane, Painter, Glazier, & Plumber. Gibson, Off. Ass.; Allen & Co., Queen Street, Cheapside. Feb. 13.  
Agar, John Samuel, Hammersmith, Middlesex, Engraver. Groom, Off. Ass.; Watson & Co., Bouverie Street, & Hammersmith. Feb. 17.  
Brown, Edw., Joseph Davy, & Thomas Davy, Cullumpton, Devon, Woollen Manufacturers. Bicknell & Co., Lincoln's Inn; Geare & Co., Exeter. Jan. 20.  
Billam, John Baron, Wakefield, York, Manufacturer. Scott, Lincoln's Inn Fields; Taylor, Wakefield. Jan. 23.  
Banks, Thos., Cheltenham, Gloucester, Linen Draper. Rush, Austin Friars; Clark, Off. Ass. Jan. 27.  
Boothby, James, Strutton's Grounds, Westminster, Grocer; and also of Tuthill Fields, Brewers' Green, Westminster, Victualler. Beicher, Off. Ass.; Amory & Co., Throgmorton Street. Jan. 27.  
Baker, George, High Hill Ferry, Upper Clapton, Middlesex, Dyer. Neal, Threadneedle Street; Whitmore, Off. Ass. Jan. 27.  
Blair, Robert, Hook, near Kingston, Surrey, Coal Dealer. Gibson, Off. Ass.; Richards & Co., Lincoln's Inn Fields. Jan. 27.  
Boud, Stephen, Westmoreland Street, St. Mary-le-bone, Wine Merchant. Gibson, Off. Ass.; Wadson & Co. Austin Friars. Jan. 30.  
Batchelor, Wm., Portsmouth, Southampton, Grocer. Hackett, Portsmouth; Dyne, Lincoln's Inn Fields. Jan. 30.  
Bennett, Daniel, Albion House, Walcot, Somerset, Spirit Merchant. Perkins & Co., Gray's Inn Square; Miller, Frome. Feb. 3.  
Baker, Wm., & Thos. Little, Basinghall Street, & Leadenhall Street, Woollen Drapers. Moseley & Co., Bedford Street, Covent Garden; Clark, Off. Ass. Feb. 6.  
Barber, James, Hungerford Market, Victualler. Abbott, Off. Ass.; Browning, Hatton Court, Threadneedle Street. Feb. 6.

Barnes, Sarah Jones, Jermyn Street, St. James's, Mercer & Glover. Hodges, Buckingham Street, Strand. Waithman, Off. Ass. Feb. 6.  
Brotherton, Thos., Bradford Moor, Bradford, York, Shop-keeper. Emmett New Inn; Messrs. Alexander, Halifax. Feb. 13.  
Crosley, Wm., Leeds, York, Cloth Merchant. Woodhouse, Temple; Stott, Leeds. Jan. 27.  
Clarke, Wm. Henry, Castle Street, Budge Row, Wine Merchant. Biggs, Great James Street, Bedford Row; Goldsmid, Off. Ass. Jan. 30.  
Collins, James, Worcester, Linen Draper. Smith, Chancery Lane; Hill, Worcester. Jan. 30.  
Crisp, James, Sydney Alley, Leicester Square, Hosier, Edwards, Off. Ass.; Jones, Size Lane. Feb. 3.  
Callow, John St., John Street, Clerkenwell, Victualler. Groom, Off. Ass.; Fyson, Ladbury, Feb. 3.  
Calma, Wm., High Street, Whitechapel, Saddler & Harness Maker. Chester, Staple Inn; Clark, Off. Ass. Feb. 10.  
Davey, Geo., Gwiner, Cornwall, Miller. Coode, Guilford Street; Paynter, Penmanee. Feb. 17.  
Dickinson, James, Nottingham, Lace Manufacturer. Capes, Gray's Inn; Wadsworth, Nottingham. Feb. 17.  
Edwards, John, Wanchelygen, otherwise Brynmawr, Llanelly, Brecon, Draper & Grocer. Blower & Co., Lincoln's Inn Fields; Gregory & Co., Bristol. Jan. 20.  
Eggleston, Jpb, Manchester, Publican & Brewer. Bower, Chancery Lane; Heath, Manchester. Feb. 6.  
Ebers, John, Old Broad Street, Bookbinder. Crowder & Co., Mansion House Place; Canaan, Off. Ass. Feb. 13.  
Eccles, Wm., & John Stalman, Hatton Garden, & Spring Garden, Tailors & Drapers. Boufield, Chatham Place, Blackfriars; Goldsmid, Off. Ass. Feb. 13.  
Edgson, Wm., Irchester, Northampton, Butcher. Atkinson, Peterborough; Anterior & Co., New Bridge Street, Blackfriars. Feb. 13.  
Fitch, Sam., Cambridge Heath, Hackney, Victualler. Edwards, Off. Ass.; Parnell, Church Street, Spitalfields. Jan. 23.  
Fisher, James Hurtle, Trafalgar Square, Charing Cross, & Chester Street, Grosvenor Place, Scrivener. Abbott, Off. Ass.; Moss & Co., Carlton Chambers, Regent Street. Jan. 27.  
Foster, John Boucher, Lower Road, Islington, Brickmaker, & Baywater, Middlesex, Publican. Haddon, Philpot Lane; Goldsmid, Off. Ass. Jan. 30.  
Fisher, the Rev. Thomas, North Ferry, Kingston-upon-Hull; the Rev. John Fisher, Higham-on-the-Hill, Leicester; and Mary Simmonds, of Ashby-de-la-Zouch, Leicester, Bankers (carrying on business at Ashby-de-la-Zouch). Fee & Co., Henrietta Street, Covent Garden; Moseley & Co., Derby. Jan. 30.  
Forster, George, Clatterbatch Forge, Stourbridge, Worcester, Spade, Shovel, & Edge-Tool Manufacturer. Rickards & Co., Lincoln's Inn Fields; Thomas, jun., Wallall. Jan. 30.  
Garaid, James, Portwood, within Brinnington, Chester, Machine Maker. Gadsden & Co., Farnival's Inn; Coppock & Co., Stockport. Jan. 20.  
Gidley, Gustavus, Wood Street, Cheshapeide, Button Manufacturer. Green, Off. Ass.; Bowden & Co., Aldermanbury. Jan. 23.  
Gray, Rob., Liverpool, Commission Agent & Ship Owner. Blackstock & Co., Temple; Brabner, Liverpool. Jan. 27.  
Gough, Rich., Newbury, Berks, Corn Factor & Corn Porter. Pininger, Newbury; Parker, St. Paul's Churchyard. Feb. 3.  
Gaskell, Thos., Bottle, near Liverpool, Hotel Keeper. Chester, Staple Inn; Finlow, Liverpool. Feb. 6.  
Gardiner, Thos., Hunter Street, Kent Street, Southwark, Currier & Leather Seller. Green, Off. Ass.; Cranch, Billiter Square. Feb. 17.  
Gaudern, Wm., Earl's Barton, Northampton, Feltmonger & Parment Maker. Jeyes, Chancery Lane; Jeyes, Northampton. Feb. 17.  
Harvey, James, Darford, Kent, Timber Merchant. Abbott, Off. Ass.; Blacklow, Frith Street, Soho Square. Jan. 20.  
Harvey, Andrew, Penzance, Cornwall, Watch Maker. Coode, Guilford Street; Richards & Co., Penzance. Jan. 23.  
Harley, Phoebe, New Street, Newington, Baker. Lane, Argyle Street, Oxford Street; Braum, Off. Ass. Jan. 30.  
Havens, Henry, Badleigh, Suffolk, Linen Draper. Burt, Aldermanbury; Waithman, Off. Ass. Jan. 30.  
Harben, Henry, High Street, Bloomsbury, Cheesemonger. Green, Off. Ass.; Gatty & Co., Angel Court. Feb. 3.  
Humphrey, Wm., Taunton, Somerset, Chemist & Druggist. Adlington & Co., Bedford Row; Lyddon, Wellington. Feb. 13.  
Ingo, Henry, Newcastle-upon-Tyne, Ship & Insurance Broker. Gibson, Newcastle-upon-Tyne; Swain & Co., Frederick's Place, Old Jewry. Jan. 27.  
Jones, Thos., Liverpool, Broker. Jones, Liverpool; Blackstock & Co., Temple. Jan. 20.  
James, David, Dartford, Kent, Banker. Green, Off. Ass.; Kirkman & Co., Cannon Street. Jan. 23.  
Johnston, Elizabeth, Dover Street, Piccadilly, & Charlotte Street, Edinburgh, Scotland, Milliner & Dress Maker. Richardson, Ironmonger Lane; Waithman, Off. Ass. Jan. 23.  
Jackson, Wm., & Geo. Longstaff, Wilde's Rents, Bermondsey, Surrey, Leather Dressers. Quallitt & Co., Prospect Place, Bermondsey; Lockington, Off. Ass. Jan. 27.

Jennings, Tho., & Tho. Jennings, jun., Brompton Grove, Kensington, Middlesex, Livery Stable Keepers. *Green, Off. Ass.; Jones, Gray's Inn Square.* Jan. 28.

Jackson, Wm., Macclesfield, Chester, Silk Manufacturer. *Low & Co., Southampton Buildings, Chancery Lane; Brocklehurst & Co., Macclesfield.* Jan. 30.

Johanson, Robert, Byker, Northumberland, Merchant & Ship Owner. *Tilson & Co., Coleman Street; Brockett & Co., Newcastle-upon-Tyne, or, Allison, Richmond.* Jan. 28.

Key, Wm., London Wall, Cheesemonger. *Jagum & Co., Barnard's Inn; Casson, Off. Ass.* Jan. 28.

King, Henry Wheeler, Bristol, Attorney & Scrivener. *Graville, Bristol; Hicks & Co., Bartlett's Buildings, Holborn.* Jan. 23.

Kain, Geo. Joseph, Blackheath Park, Kent, Coal Merchant & Ship Owner. *Gibson, Off. Ass.; Thomas, Fen Court, Fenchurch Street.* Feb. 8.

Knight, John, Lower Belgrave Place, Piccadilly, Ironmonger. *Fisher & Co., Aldersgate Street; Graham, Off. Ass.* Feb. 17.

Layfield, Tho., & Wm. Layfield, Silver Street, St. James's, Tailors. *Taylor & Co., Great James Street, Bedford Row; Clark, Off. Ass.* Jan. 30.

Lyons, Norrison John, South Lambeth, Surrey, Master Mariner, Ship Owner, & Merchant. *Gibson, Off. Ass.; Jacobs.* Jan. 28.

Leader, Wm., Wells Street, Oxford Street, Coach Maker. *Groom, Off. Ass.; Bailey, Berner Street, Oxford Street.* Jan. 27.

Langhorne, Wm., Throgmorton Street, Stock Broker & Commission Agent. *Worsfold & Co., Queen Street, Cheapside; and Liverpool; Casson, Off. Ass.* Feb. 5.

Lawa, John, Wick & Abson, Gloucester, Miller. *Dar & Co., Lincoln's Inn Fields; Dayston & Co., Bristol.* Feb. 6.

Miller, Isaac, Liverpool, Merchant & Commission Agent. *Brooks Liverpool; Jones & Ward, John Street, Bedford Row.* Jan. 20 & 27.

Miles, George, Stroud, Gloucester, Clothier. *Crowder & Co., Mansion House Place; Turquand, Off. Ass.* Jan. 23.

Martin, Wm., Doncaster, York, Contractor for & Fitter of Gas Works. *Church, Great James Street, Bedford Row; Barbary, Sheffield.* Jan. 27.

Martin, Wm., Steel Yard, Upper Thames Street, Wine Merchant. *Graham & Co., Castle Street, Holborn.* *Whitmore, Off. Ass.* Feb. 18.

Mulliner, Joseph Manning, Northampton, Coach Maker. *Blackstock & Co., Temple; Cooke, Northampton.* Feb. 10.

M'Namara, Wm., Houndditch, Plumber & Glazier. *Ellis, Rood Lane; Graham, Off. Ass.* Feb. 13.

Owen, Wm., Manchester, Glass & Lead Dealer. *Adlington & Co., Bedford Row; Law, Manchester.* Jan. 27.

Oldham, Joseph, Friday Street, Cheapside, Laceman. *Belcher, Off. Ass.; Parker, St. Paul's Churchyard.* Feb. 3.

O'Kell, Wm., Liverpool, Commission Share Broker, & Share Dealer. *Blackstock & Co., Temple; Brabner, Liverpool.* Feb. 10.

Perry, John, & James Rayment, Manchester, Paper & Clay Dealers. *Steele, Green, & Co., London; Harding, Manchester.* Jan. 23.

Park, John, Wortley, Leeds, York, Woollen Cloth Manufacturer. *Makinson & Co., Temple; Foden, Leeds.* Jan. 23.

Philpott, Joseph Wetherly, Selby Hall, Northfield, Worcester, Dealer in Metals. *Bourdillon, Great Winchester Street; Simcox & Co., Birmingham.* Jan. 27.

Page, John, Hayes Court, Greek Street, Soho, Newspaper Vender. *Watson, Gerrard Street, Soho; Lackington, Off. Ass.* Feb. 5.

Phillips, Mary Ann, Dorset Square, St. Marylebone, Schoolmistress. *Nicholson, Raymond Buildings, Gray's Inn; Johnson, Off. Ass.* Feb. 5.

Penny, Wm., Bristol, Brewer. *Perkins & Co., Gray's Inn Square; Miller, Frome Selwood.* Feb. 6.

Potter, Tho., Kidderminster, Worcester, Carpet Manufacturer. *Dangerfield, Lincoln's Inn Fields; Briston, Kidderminster.* Feb. 10.

Parr, Edw., Off-Alley, Villiers Street, Strand, Furniture Broker. *Dignam, King Street, Holborn; Johnson, Off. Ass.* Feb. 13.

Reeve, John Thomas, Whitechapel High Street, Victualler. *Belcher, Off. Ass.; Keane, Gray's Inn Square.* Jan. 23.

Rigby, John Thomas, Tarlton, Lancaster, Coal Merchant. *Adlington & Co., Bedford Row; Johnson; St. Helen's, Lancaster.* Feb. 13.

Ritchie, Alex., Carey Street, Licensed Victualler. *Belcher, Off. Ass.; Tilson & Co., Coleman Street.* Feb. 17.

Sharland, Tho. Ward, Lane Street, London, Tea Broker. *Casson & Co., Temple; Graham, Off. Ass.* Jan. 23.

Scholey, Marmaduke, Kingston-upon-Hull, Draper. *Jones & Co., Temple; Messrs. Wood, Manchester.* Jan. 23.

St. James, Fred. Dixon, River Street, Pentonville, Coal Merchant. *Edwards, Off. Ass.; Williams, Old London Street, Mark Lane.* Jan. 30.

Smith, Tho., Stroud, Gloucester, China & Earthenware Dealer. *White & Co., Bedford Row; Coleman, Stroud.* Feb. 8.

Smith, Anthony Harris, Newcastle-upon-Tyne, and North Shields, Grocer & Tea Dealer. *Edwards, Off. Ass.; Amory & Co., Throgmorton Street.* Feb. 10.

Stirling, Rob., High Street, Poplar, Middlesex, Brewer.

*Green, Off. Ass.; Graham & Co., Castle Street, Holborn.* Feb. 10.

Satcher, Wm., Great Saffron Hill, Victualler. *Noy, Seething Lane; Lackington, Off. Ass.* Feb. 17.

Stephan, Daniel Wells, Rensworth, Hants, Wine Merchant. *Slobridge, Great Russell Street, Bloomsbury; Whitmore, Off. Ass.* Feb. 17.

Tombs, John, & Tho. Tombs, Emerson Street, Park Street, Southwark, Builders. *Hutchison, Crown Court, Threadneedle Street; Casson, Off. Ass.* Jan. 27.

Taylor, Sam. John, Fleet Street, Tobacconist & Snuff Manufacturer. *Ashkin, St. Mildred's Court, Poultry; Johnson, Off. Ass.* Jan. 27.

Tuck, George, Cleveland Street, Fitzroy Square, Grocer. *Whitlock, Aldermanbury; Whitman, Off. Ass.* Feb. 5.

Wigan, Arthur Ladbroke, Brighton, Surgeon & Apothecary. *Borradaile & Co., King's Arms Yard, Coleman Street; Lackington, Off. Ass.* Jan. 28.

Walker, Henry Gier, White Lion Street, Spital Square, Coach Maker. *Groom, Off. Ass.; Kipping, City Terrace, City Road.* Jan. 23.

Wakefield, John, Hallow, Worcester, Machine Maker, Grocer, Shopkeeper, Carpenter, & Timber Dealer. *White & Co., Bedford Row; Moldenauk & Co., Worcester.* Jan. 23.

Williamson, Men. Wm., Balham, Cambridge, Horse Dealer & Dealer in Cattle. *Abbott, Nicholas Lane, Lombard Street; Turquand, Off. Ass.* Jan. 30.

Walker, Tho., Fort Street, Spitalfields, Silk Manufacturer. *Abbott, Off. Ass.; Hudson, King Street, Cheapside.* Jan. 30.

Wood, John, Castle Street, Holborn, Flannel Dealer. *Groom, Off. Ass.; Billing, King Street, Cheapside.* Feb. 3.

Willington, Stephen, jun., Shirehampton, Westbury-upon-Trym, Gloucester, Inhabiler. *White & Co., Bedford Row; Hartley, Bristol.* Feb. 6.

Willis, John, Liverpool, Merchant. *Jones & Co., John Street, Bedford Row; Foster & Co., Liverpool.* Feb. 6.

Walker, James, jun., Wortley, Leeds, York, Woollen Cloth Manufacturer. *Makinson & Co., Temple; Foden, Leeds.* Feb. 6.

West, Henry, Aslacton, Norfolk, General Shopkeeper. *Wood, Falcon Street, Aldersgate Street; Wortley, Norwich.* Feb. 6.

William, Richard, Abneywith, Cardigan, Innkeeper. *Clarke & Co., Lincoln's Inn Fields; Hall, Bristol.* Feb. 6.

Wilson, William, Leeds, York, Linen & Woollen Draper. *Wiglesworth & Co., Gray's Inn Square; Souby, Leeds.* Feb. 10.

Weston, George, Nottingham, Joiner & Builder. *Cope, Raymond Buildings, Gray's Inn; Wadsworth, Nottingham.* Feb. 10.

Wetherell, Peter, Shouldham, Norfolk, Grocer & Draper. *Goodwin, King's Lynn; Sawyer, Staple Inn.* Feb. 18.

Watson, James, Lynemouth, Northumberland, Painter & Ship Owner. *Larrey, Finner's Hall Court, Broad Street, London; & also at Lynemouth.* Feb. 13.

Wright, Henry, Old Broad Street, Merchant. *Kirman & Co., Cannon Street; Turquand, Off. Ass.* Feb. 17.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Jan. 20, to Feb. 17, 1885, both inclusive, with Dates when gazetted.

The names printed in *Italics* are the Partners who receive and pay debts.

Sewell, Thomas, William Hearn, Henry Sewell, & Robert Burleigh Sewell, Newport, Isle of Wight, Attorneys & Solicitors. Jan. 20.

Mackmurdo, Edward, & Robert Vigne, New Broad Street, Attorneys, Solicitors, and Conveyancers. Jan. 27.

Brace, Thomas, George Brace, & Thomas Brace, jun., Surrey Street, Strand, Attorneys and Solicitors. Jan. 27.

Jordan, Richard, Henry Warraby, & Christopher Edward Dampier, Ware, Hertford, Solicitors & Attorneys; so far only as regards Richard Jordan. Jan. 27.

Coates, John, jun., & Quintin Rhodes, Ripon, York, Attorneys and Solicitors. Jan. 30.

James, John, & Charles Collins, Swansea, Glamorgan, Attorneys & Solicitors. Feb. 10.

Richardson, James, High Street, & Edward Hall, Poultry, Attorneys, Solicitors, Conveyancers, Money Scriveners, & Parliamentary Agents. Feb. 10.

Horton, Edward, & Edward John Horton, Fumival's Inn, Attorneys & Solicitors. Feb. 13.

Parry, John Schank, & Edward Bailey, Leamington Priors, Warwick, Attorneys at Law & Solicitors. Feb. 13.

Price, John Dutton, & George Samuel Wegg Horne, Lincoln's Inn Fields, Attorneys & Solicitors. Feb. 17.

Iverson, Thomas, & Martin Kidd, Holmfirth, York, Attorneys at Law, Solicitors, & Conveyancers. Feb. 17.

Ling, Henry, William Bennet, & Frederick Harrison, Bloomsbury Square, & Bury St. Edmunds, Suffolk, Attorneys at Law, Solicitors, & Conveyancers; as far as regards William Bennet. Feb. 17.

# The Legal Observer.

Vol. IX.

SATURDAY, MARCH 7, 1835.

No. CCLVII.

— “Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON THE RIGHT OF A JUDGE TO RETURN TO THE BAR.

THE right of a Judge to return to the Bar has recently been the subject of some discussion in the profession. There is an obvious distinction as to this, when a Judge holds his office at the pleasure of the Crown, as in the case of the Lord Chancellors of England and Ireland, and where he holds it during good behaviour, as in the instance of the Judges of the Superior Courts of Law. At the period of our history when a Judge held his office during pleasure, there are frequent instances of a Judge returning to the bar on being dismissed from his office; the most celebrated instance of which is perhaps that of Sir Robert Heath, in the tenth year of King Charles the First, who being discharged from his office of Chief Justice of the Common Pleas, returned and practised at the bar.\*

It seems pretty clear, therefore, that there is nothing in the judicial office of a Lord Chancellor of England or Ireland, to prevent his return to the bar on his resigning the Seals. If, however, such a Lord Chancellor should also be a peer of the realm, then it would seem that he cannot return to the bar; as it is against the established etiquette of the profession, that a peer shall be a member of the bar: which rule probably had its origin in the incompatibility of discharging the duties of an advocate, with the fulfilling the judicial duties of the House of Lords.

This rule being established, another question arises, as to the power which a peer has to waive or resign his dignity: and on

this point we shall lay the authorities before our readers, which are to be found collected in the work of Mr. Cruise on Dignities.

And first, as to the right of a peer to waive his dignity.—If (says Lord Coke<sup>b</sup>) the King calleth any knight or esquire to be a lord of Parliament, he cannot refuse to serve the King in *illo communi consilio*, for the good of his country. However, in the case of the Dukedom of Dover<sup>c</sup>, this question was argued at length before the House of Lords, and the Lords differed in opinion, Lord Cowper being of opinion that the King could not create a subject a peer of the realm against his will, because then it might be in the power of the King to ruin any subject whose estate and circumstances might not be sufficient for the honour. Lord Trevor, *contra*, said that the King had a right to the service of his subjects in any station he thought proper. Lord Cowper also held that a minor might waive when of age, a peerage granted to him during his infancy, especially in the case of a Scotch peerage. But Lord Trevor said that in Lord Abergavenny's case,<sup>d</sup> it was admitted that the King might fine a person whom his Majesty thought fit to summon by writ to the House of Peers, and so *toties quoties* when there was a refusal; and consequently might compel the subject to accept of the honor. It appears that by the Scotch law a person cannot refuse or waive a patent of peerage granted to him during his infancy. Mr. Cruise<sup>e</sup>, therefore, is right in treating it as doubtful whe-

<sup>b</sup> 4 Inst. 44.

<sup>c</sup> 1 P. Wms. 582.

<sup>d</sup> 12 Co. 70.

<sup>e</sup> Cru. Dig. 95, 2d ed.

ther a person can refuse or waive a dignity conferred on him by the Crown; but it would seem clear, that having once accepted it, he cannot waive or refuse it.

Next, as to the right of a peer to surrender his dignity. — A dignity or title of honor might formerly be surrendered to the crown, of which there are several instances. Thus in 4 Henry 3, Andrew Giffard, Baron of Pomfret in fee, surrendered that dignity to the King. So in 23 Hen. 3, Simon Mountford, being Earl of Leicester, and desirous to take that honor from his eldest son, who had another title, and to give it to his second son, he surrendered it to the King, who re-granted it accordingly.

In the rolls of Parliament, 3 Hen. 6, there is a surrender of the earldom of Norfolk, by Roger Bigod, to the crown, of which the words are, — "*Sciatis non reddidisse remisisse et omaino quietum clamasse pro nobis et heredibus nostris magnifico principi et domino nostro kurissimo Domino Edwardo Dei gratia regi Angliæ illustri quicquid juris honoris et domini hujusmodi nomine comitis in comite Norff' et mariscalciam Angliæ; habendum et tenendum eidem domino Regi et heredibus suis, cum omnibus et singulis ad ea qualitercunque spectantibus quocunque nomine censeatur, quieti de nobis et heredibus nostris imperpetuum. Ita quod nos vel heredes nostri seu aliquis nomine nostro nihil juris vel clamei in eidem aut suis pertinentibus quibuscunque de cetero vindicare poterimus vel habere. In cujus rei testimonium, &c.*"

Sir Charles Brandon being affianced to Elizabeth Viscountess Lisle, who was an infant of tender years, obtained letters patent in 5 Hen. 8, creating him Viscount Lisle, to him and his heirs by the said Elizabeth. "But having shortly after happened on a fuller morsel, he yielded up the letters patent to be cancelled."<sup>a</sup>

In 1639, Roger Stafford claimed the Barony of Stafford as the grandson and heir male of Henry Lord Stafford, eldest son of Edward Duke of Buckingham. King Charles the First intended to create Sir W. Howard, son to Thomas Earl of Arundel, who had married the sister of Henry Stafford, the last heir male of the elder branch of that family, Baron Stafford; it was advised that there might be a fine levied by the said Roger of this barony to the King, which was done accordingly.<sup>b</sup>

This doctrine has however been altered; for it was resolved by the House of Lords,<sup>c</sup> in the case of the Barony of Grey of Ruthin, — "That no peer of this realm can drown or extinguish his honor; but that it descends to his descendants; either by surrender, grant, fine, nor any other conveyance to the King." And some years after, the validity of a surrender of a dignity by fine to the King being questioned, it was resolved by the House of Lords, upon great deliberation, and after hearing the attorney general, that such surrender was void.

John Villers was created Baron Villers of Stoke, and Viscount Purbeck in 1619, by letters patent to him and the heirs male of his body.

In 1660, Robert Villers his son, on whom these dignities had descended, and who was accused of treasonable practices during the rebellion, petitioned King Charles the Second to accept of his dignity; and his Majesty's council being of opinion that he might legally surrender his dignities to the crown, a fine was accordingly levied by Lord Purbeck of all his dignities to the King.

In 1675, Robert Villers, the son of the above named Robert, petitioned his Majesty for the dignities of Viscount Purbeck and Baron Villers; which being referred to the attorney general (Sir William Jones), he reported, that forasmuch as it was a considerable question never resolved, that he knew of, whether a peer could by fine, bar or extinguish an entailed honor, he recommended that the petition should be referred to the House of Peers. A reference was accordingly made by his Majesty to the House of Peers, where it was argued on the behalf of the petitioner, that this was a personal dignity, annexed to the blood; and so inseparable and immovable that it could not be either transferred to any other person, or surrendered to the crown. It could move neither forward nor backward, but only downward to posterity; and nothing but deficiency or corruption of blood could hinder the descent. Sir William Jones endeavoured to support the surrender, upon the authority of several ancient precedents; and among others, those that have been already stated. The House of Lords came to the following resolution: "Forasmuch as upon debate of the petitioner's

<sup>a</sup> Charles Brandon married the Queen Dowager of France, sister to King Henry 8.

<sup>b</sup> It was formerly a common practice for per-

sons who had peerages, created by letters patent, to return them to the crown, in order that they might be cancelled.

<sup>c</sup> Lords' Journ. V. XI. 93.

case, who claims the title of Viscount Purbeck, a question in law did arise, whether a fine levied to the King, by a peer of the realm, of his title of honor, can bar and extinguish that title. The Lords spiritual and temporal in Parliament assembled, upon very long debate, and having heard his Majesty's attorney general, are unanimously of opinion, and do resolve that no fine now levied, or at any time hereafter to be levied to the King, can bar such title of honor, or the right of any person claiming under him that levied or shall levy such fine."<sup>d</sup>

It would seem clear, therefore, that a Lord Chancellor of England or Ireland cannot return to the bar, if he be a peer of the realm.

## REVIEW.

*Les Temporis. A Treatise on the Law of Limitation and Prescription.* By David Gibbons, Esq., of the Middle Temple, Special Pleader. Saunders and Benning. 1835.

UNTIL the projected reforms and alterations shall be completed, and the Law brought into a somewhat settled state, it is absolutely necessary that the new *items* of legislation should be constantly "posted" to the proper head of account in our great and complicated system of jurisprudence. We hope that in our vocation we have assisted in some degree in this useful labour, and we willingly encourage all our coadjutors in the laudable undertaking of assisting the members of the profession, amidst the ever-changing state of the law, in the discharge of their difficult duties.

Mr. Gibbons's work appears to be a useful and well arranged summary of the law of Limitation and Prescription. The first part treats of the operation and extent of the Statutes of Limitation;—the time from whence the limitation is reckoned;—the disabilities which delay the operation of the statutes;—of the mode of saving the statutes;—of taking advantage of the statutes;—of acknowledgments which revive the debt;—and of the general effect of the statutes of limitation. The second part treats of the nature of Prescription, and what property may be thereby acquired;—

of the duration of Prescription;—and how Prescriptions are claimed.

It will afford a fair specimen of the utility of Mr. Gibbons's labours, and of the mode in which he has executed his design, if we extract part of the conclusion of his Book, or "Summary of Rules." It is as follows:

"Having (he says) now stated and commented on all the statutes and principal cases relating to the law of Limitation and Prescription, it may be as well, in conclusion, to give a summary of the rules inducible from the consideration of the whole subject. By this method the analogies and differences of the parts will appear more prominent, and the systematic connection of the whole be more clearly perceived.

"1. By acquiescence for a certain time in an adverse possession, or by neglecting to demand redress for an injury, the party is precluded from disputing the possession or recovering redress; it being concluded, that if he ever had a right to the thing, he has abandoned it, that the injury if suffered, has been forgiven.

"From this general axiom may be deduced all the law both of limitation and prescription. The distinction between them is this; where limitation applies, the party demands the entire thing against the possessor, who is presumed to have the right; where prescription, the party demands a qualified right to the thing against the oppressor, who is presumed to have the absolute right to the entirety. In the one case, therefore, the acquiescence is that of the demandant, and will necessarily appear upon the evidences of his right. In the other, it is that of the tenant, and must be proved by the demandant.

"2. The possession of the tenant in the case of absolute or limited rights, and of the demandant in the case of qualified or prescriptive rights, is deemed adverse until the contrary be shown. And to show this, it must be proved, that the tenant in the one case, or the demandant in the other, had during the time of limitation or prescription a limited interest in the thing; so that his possession could not be defeated by his opponent.

"In the case of land, &c., a written acknowledgment by the tenant, that the demandant has the property therein, proves the possession not to be adverse at the time of the acknowledgment, provided that then the demandant actually has the right thereto. If time has operated on his right to extinguish it, such acknowledgment, passing no interest, will be of no avail.

"3. Acquiescence by neglecting to demand a debt or other personal right, only raises a presumption of satisfaction in favour of the defendant. Therefore, if he do not insist on that presumption by pleading the statute, the plaintiff may recover his right by action. And so, a written acknowledgment, from which a promise may be inferred, will give a new cause

<sup>d</sup> Journ. V. XIII. 182. Show. Parl. Ca. 1.

of action, although the debt has been over due more than the limited time.

"A mere acknowledgment of the existence of the debt, from which no promise can be inferred, rebuts the presumption of satisfaction; yet the debt cannot be recovered by action, because the Statute of Limitations peremptorily bars the action, where the debt has not been demanded for the specified time.

"4. Where the party, entitled either to demand a right or to dispute an encroachment, is an infant, insane, under coverture, or absent beyond seas, his neglect to enforce his rights cannot be deemed an acquiescence in his adversary's right. And so, if a party against whom there is a personal demand, be absent beyond seas, neglect to demand the right will not prejudice the claimant.

"In some cases where the demandant is in prison, he is considered under such an incapacity to assert his right, as explains his delay. In others, not.

"In cases of prescriptive rights, where the tenant of the land is absent beyond seas, his neglect to dispute the claim is an acquiescence confirmatory of the demandant's title.

"The reason is obvious; for where a person, having a right to demand the possession of a thing or the performance of a personal duty, is beyond seas, his delay in asserting his right will not prejudice him, because he has no perfect opportunity so to do. But where a person is in the possession and enjoyment of the profits of land, &c., although absent beyond seas, he cannot be presumed ignorant of the existence of a claim derogatory to such possession and enjoyment, or incapable of resisting it.

"5. Where a party has once a perfect opportunity of asserting his right, and fails to do so, his acquiescence will be presumed, notwithstanding he become disabled before the full time has expired.

"If a person having a right to real property continue under a disability until his death, the disability of his descendant will not excuse his delay. This is not altogether consistent with principle.

"But in cases of prescriptive rights, the tenant of the land must have been during the full period of acquiescence, perfectly aware of his rights, and competent to resist the claim.

"6. A possession adverse to an individual is considered adverse to all those claiming in succession from him, and whose interests he might have disposed of. Thus, a possession adverse to a tenant in tail bars those in remainder and reversion; but a possession adverse to a tenant for life does not prejudice him in remainder.

"7. In rights to real property, whether of common right or not, after a certain time, which may be termed the conclusive period, the possession is presumed to have been adverse, notwithstanding the party entitled to claim or resist may have been disabled. And in claims for property not of common right, although the party capable of resisting it be tenant for life.

"To this rule there are two exceptions. (1.) Where a right of way or watercourse is claimed over land which is held by tenant for life, or years exceeding three, the user of the way is not reckoned adverse to reversioner, if he resist it within three years after the determination of the particular estate.

"(2.) Where land is possessed by the person entitled to the tithes, the time of such possession is not reckoned in prescriptions against the title owner.

"8. In personal demands, where the party entitled takes legal measures to assert his right before time has raised the presumption of satisfaction, and those measures fail of effect, he has a reasonable time (*i.e.* one year) after such failure to assert his right afresh, notwithstanding the time has expired.

"This rule does not apply to real demands, because there the object is to exonerate or charge land in favor of the possessor, who probably holds *bona fide*: the presumption of abandonment, therefore, is more absolute and less rebuttable by circumstances, than the presumption of the satisfaction of a personal demand, by which a wrong-doer is discharged from responsibility."

We rarely enter into a critical examination of the stile and peculiarities of composition of legal authors. Indeed professional works are usually written in a concise and simple manner, and very rarely attempt any embellishment. In practical works especially, all efforts of an ornamental kind must evidently be quite out of place. The present author, however, is not content with the usual stile of legal authorship, but is evidently ambitious of the character of a lively writer, seeking to interest the student with the graces of literary composition. After adverting in his preface to the existing works on the Law of Limitation, and the necessity of a new one, in consequence of the recent enactments and decisions, the author says,

"Law books are not exempt from the destroying influence of time, and to them is applicable the sentiment of the Latin poet:

'Non semper idem floribus est honos  
Vernis: neque uno Luna rubens nitet  
Vultu.'

And should this offspring of the author's lawful labours live so long as the child of a tenant by the curtesy, every volume of Reports will contract the span of its being, and a new act of parliament plunge it headlong into oblivion."

Afterwards he says,

"It may be necessary to say a word in excuse of the motto prefixed to the title-page, which although unusual, the author trusts is legitimate. He sees not why lawyers should ransack foreign writers for sentiments to sanction their performances, nor why they should

not be as proud of an acquaintance with the classic bards whom the equal laws of England have inspired to sing, as with those of Greece and Rome. The quotation is from a neglected, though not inelegant English poet. It presented itself to the author in the course of his miscellaneous reading; and he selected it as not inapplicable to the present subject; for the effect of time is the same on a cause of action as on a suit of clothes—it renders them both unsustainable; and as the one may be revived by an acknowledgment, so the other may be mended by a patch."

The motto for which this apology is made is the following:

"My Galli-gaskins, that have long withstood  
The winter's fury, and encroaching frosts,  
By TIME subdued, (what will not TIME sub-  
due!)"

J. PHILLIPS' *Splendid Shilling*.

It may be supposed, however, that in the preface of a book the writer may be permitted some indulgence of his natural taste, before he enters on the drudgery of expounding the abstruseness of the Law. It happens, however, that Mr. Gibbons carries his taste for elegance beyond the threshold of the inquiry. He thus imposingly commences: "To discuss the effect of time in our law, is the object of the present treatise. Time, whose gradual and imperceptible operation produces such mighty changes in objects of nature, has a corresponding effect upon legal rights and liabilities." Again he says, "it might seem more natural to have treated of Prescription, the *creative faculty* of time, before Limitation, the *destructive faculty* of time."

Now, with the best wishes for the author's future benefit, we recommend him to abandon this lofty stile of writing, and aim only at the clear and forcible. In this we think he will be more successful and more useful; and with this advice we recommend his book to the notice of the profession.

## PROPOSED ALTERATION IN THE LAW OF COPYHOLDS.

WE have received the sketch of a Bill to promote the extinction of certain manorial tenures and customs in England, by Mr. Reginald Bray, whose object will be best collected from his introductory remarks:

"Having (he says) had considerable practice as a Steward of Manor Courts, and frequently considered the subject of enfranchisement, I venture to submit to the profession a sketch of such an Act as, in my opinion, would in a short

time accomplish the chief object, namely, the abolition of arbitrary fines and heriots, with as little injury as possible to private rights.

"It will probably be objected that a more sweeping measure is required; or in other words, that this would be too gentle and discriminating. I can only reply, that if a general and compulsory measure is found necessary, it will be attended with much less difficulty and injustice, if preceded by the operation of such an act as I propose; and that it would be better, after having submitted for so many centuries to manorial tenures, to wait a few years longer for their gradual extinction, than, for the sake of an immediate abolition, to sacrifice the rights of individuals.

"With respect to Courts Leet, the expense of holding them is frequently a burden on the lord: it must therefore be provided by another Act, that no lord of a leet shall be compelled, by mandamus or otherwise, to hold a court against his will; but if he omits to do so at the accustomed period, he must forfeit his franchise, and the officers must be appointed as in a parish where no leet is now held."

The following is the substance of the proposed Bill, with Mr. Bray's remarks on the several principal parts thereof.

It being expedient to promote the extinction of such manorial tenures and customs as retard the improvement of land, or diminish the value thereof to the holders, without commensurate advantage to others:

And there being land in various parts of England which is of copyhold tenure, or holden by custom of a manor, and by reason of such tenure or custom is subject to the payment of arbitrary fines or heriots, and other concomitant burdens:

It is proposed to be enacted as follows:—

The lord and the holders of half the land subject to arbitrary fines, or heriots, may effect an extinction; or the holders of three-fourths of the land, without the lord.

[The owners of land are interested in its enfranchisement according to its capability of improvement, and not according to its value.

The object is to get rid of arbitrary fines and uncertain payments, such as fines on admittance, sale of timber, &c.; and heriots of the best beast, &c. The concomitant burdens are of no consequence, but may as well be discharged at the same time. It is not proposed that this act should apply to manors in which all the fines and other payments are certain, as in the north of England. In such manors the value of the lord's rights would be much more easily calculated, and there would be no occasion for local commissioners.]

Husbands, guardians, &c. to represent persons under incapacity.

Declaration to be signed and filed by the parties desirous to enfranchise. Two Commissioners to be named, and an umpire.



Subject to the approval of the Chief Justice of the Court of Common Pleas.

[It is necessary to guard against an improper appointment, but the existence of such a guard will generally prevent the necessity of resorting to it.]

Chief Justice to appoint in default of the parties.

Appointment of new Commissioners.

Appointment of a new Umpire.

No person interested to act as a Commissioner or Umpire.

Commissioners to take an accurate account of lands subject to arbitrary fines or heriots.

[The Commissioner, as the agent of the tenants of the manor, would have a right by law to inspect the Court-rolls, and to be informed respecting the customs of the manor.]

Commissioners may enter lands.

[The Commissioners would not be authorized to enter houses without consent; but the owners are interested in giving such consent, and will be the sufferers if they withhold it.]

Commissioners to make a schedule of lands subject to arbitrary fines or heriots; and of the prices of enfranchisement.

A copy of the schedule to be exhibited.

Notice to each holder of land.

[It would be a great hardship on tenants for life and others, particularly cottagers, who had recently paid fines, if the annual payment were to commence immediately. The lord cannot complain of the postponement, because the Commissioners will make him an adequate allowance.]

Commissioners to make their award six months after exhibition of the schedule.

Fines or heriots in the mean time to be taken into account by the Commissioners.

Award to be filed and notice thereof given by proclamation.

Persons dissatisfied may bring an action to try their rights. Action must be commenced in three months after the filing of the award. Plaintiff to pay 200*l.* to abide the result.

The whole to be returned, if the plaintiff obtains a verdict.

Action not to abate by death.

Commissioners may correct errors with consent

Commissioners to take into account the circumstances of each tenement.

[It would be the greatest injustice to individuals, if, in fixing the compensation, regard were not paid in every case to its particular circumstances; and for this reason, if for no other:—it is more advisable to have local commissioners for each manor than a metropolitan or provincial board. For instance, the redemption money for a heriot must depend on the

circumstances of the holder of the land charged. An acre of land in the highest state of cultivation, belonging to a poor man who keeps no cattle, is not likely to yield a heriot, and a small sum will compensate the lord for its discharge, while an acre of worse land, which from its situation in a park or near a mansion, has become the property of a rich man, may be expected to produce frequent heriots, and ought not to be enfranchised without an adequate allowance to the lord.

The Commissioners will have to consider, in every case, what the lord's right is worth, on a fair calculation of the chances both for and against him.]

Annual compensation may be recovered by distress or action.

If the principal sum awarded be not paid when due, to carry interest at five per cent.

Principal money due to tenant for life of a manor, if not under 200*l.*, to be paid into the Bank of England.

If under 200*l.*, to be paid to the lord.

Commissioners to award equivalent to tenant for life of a manor, for postponement of annual compensation.

Costs of the proceeding to be paid by the holders of land.

Costs to be a landlord's tax.

Statement of costs to be submitted to and signed by three magistrates, before any proceedings for recovery.

Action or suit for any thing done under this act to be commenced within one year.

Validity of the award shall not be questioned for informality, unless the party complaining has been injured by such informality.

Extinction of tenures not to defeat any will or settlement.

Court-rolls to be preserved.

Not to affect rights over the waste.

When any copyhold land is enfranchised, the land, if any, subject to fines certain, to be included.

[This enactment is desirable, because after an enfranchisement of the lands in any manor subject to arbitrary fines, the remainder would not remunerate the lord for the expense of holding the courts. It is not intended to apply to manors where all lands are exempt from arbitrary fines or heriots.]

## DOUBTS ON THE NEW STATUTES.

### AFFORTIONMENT OF RENT, &c.

Sir,

Your correspondent S. W. S. only seems half inclined to believe, that if words of apportionment be inserted in a deed, they would have the effect of making the rent, &c. payable *de die in diem*. As I consider this a very mate-

that position to be established, before considering the effect of the present act, I shall beg to call the attention of S. W. S. to the following remarks:

"The rule of Common Law, that on the death of a lessor, tenant for life, in the interval between two periods, at each of which a portion of rent becomes due from the lessee, no rent can be recovered for the occupation since the first of those periods,—rests on two propositions; 1st, that an entire contract cannot be apportioned; 2d, that under a lease with a periodical reservation of rent, the contract for the payment of each portion is distinct and entire. In its familiar practical applications, the principle that an entire contract cannot be apportioned, seems founded on reasoning of this nature: That the subject of the contract being a complex event constituted by the performance of various acts, the imperfect completion of the event by the performance of some only of those acts, (as service during a portion of the specified period, navigation to an extent less than the voyage undertaken), cannot by virtue of that contract of which it is not the subject, afford a title to the whole or to any part of the stipulated benefit. Whatever be the origin or the policy of the principle, it has unquestionably been established as a general rule, from the earliest period of our judicial history." The above is Mr. Swanston's commencement to his very able note in the first volume of his Reports, p. 337; and his position is fully borne out in the cases there quoted, in number about thirty. The very cases which are a qualification to this rule, admit it: viz. such contracts which on the face of them show the intention of the parties to be, that they did not consider the contract entire, but apportionable; and the cases chiefly given are cases upon insurance, where it was sufficiently clear that the voyage was so far divided out into portions as not to form an entire contract. It is plain therefore, that if a party contracted with another for the payment of a sum at periodical times, that the payment at any other time was not within the contract, without such other time was apparent on the face of the contract; and that it is rather the neglect of the losing party omitting to make such necessary provision. This may be illustrated by the case of *Jenner v. Morgan*, 1 P. W. 392, in which a father being tenant for life with remainder to his son in tail, a judgment creditor of the father extended the land, and leased it to the defendant rendering rent payable quarterly—the father having died in the middle of a quarter.—*Lord Chancellor*, this is an accident which the judgment creditor might have guarded against, by reserving the rent weekly; so that it is his fault, and becomes a gift in law to the tenant. If then it be, from the very contract of the parties, that apportionment shall not take place, it is surely not too much to say, that independent of such contract, or in case it appears on the face of the contract to be the intention of the parties, apportionment shall take place in such matters as are apportionable. For example, I possess 1000 bricks; these are

divisible into as many portions as there are bricks; a party contracts to pay me a certain sum for them on delivery of the whole; this contract destroys my power of suing for a part, because such was not intended, but excluded from, rather than included in the contract. Independent however, of such contract, or if on the face of it there appears an intention to accept less than the whole, I may recover for such portion supplied. Such doctrine is equally applicable to contracts between parties under leases, where rent is reserved generally and no mention made of half yearly or quarterly payments, (and these being matters of arrangement, there is nothing to prevent a party making it weekly, daily, or even hourly, to prevent loss), nothing is due until the end of the year. So great however, would be the annoyance of reserving rent in such manner as weekly, daily, &c., that it is generally reserved half yearly or quarterly; and where the lessor's interest is a determinable one, a proportionate rent is reserved for so many days as intervene between the last quarter day and the day of the expiration of the interest; this, therefore, being equally a portion of the contract, would be payable in the same way as that portion which was payable only on particular days. The payment of annuities and all other payments arising by way of contract, and payable at fixed times, must of course be subjected to the like doctrine.

I should not have considered it requisite to have gone so far with this matter, (which I conceived too clear to require more than a statement), if S. W. S. had not said I assumed the position, (see p. 312), that introducing words of apportionment into a deed had the effect of making a payment payable *de die in diem*.

Having thus given some reason for my position without altogether assuming it, I shall now proceed to consider S. W. S.'s present letter, in which he says he supposes I will admit, that if a person entitled to a determinable annuity may recover a proportionate part, without the aid of the remedy-giving clause of the act, so may a person entitled to a continuing annuity. (Here I may perhaps be allowed to digress for one minute, in order to ask, why at the eleventh hour I am called upon to talk about continuing payments, when at p. 166, he accuses me of avoiding the question by talking of continuing payments, while he was only talking of determinable ones?) Admitting what he asks, weakens no position of mine, and I therefore willingly do so:—He then adds, "In this respect both parties stand in precisely the same situation. Why then should we construe the act as expressly giving remedies to the one, and not to the other? Why should one be included, and the other excluded?" In answer to these queries, I would in return ask, in what portion of the correspondence have I claimed a benefit, either for a party with a determinable or a continuing interest? (Here let him again consider, that he confined me to speak upon the former.) If a remedy be given for the cure of a grievance, then may it be called a benefit:

but I have yet to learn which is the remedy-giving clause in the act. On reference to my former communications, I think it will be seen that I treated the second part of the 2d clause, (which I presume is the remedy-giving clause,) as a restraint upon the general right, (that is, to continuing as well as determinable interests), given to an apportionment by the first portion of the 2d clause. As I am now to speak upon continuing as well as determinable interests, I may as well, in the first instance, point out how far words of apportionment affected parties taking interests in continuing payments. Intention of the parties, as much in these as in determinable interests, was the rule; and therefore, if that intention was not sufficiently expressed, the party taking the property took it with such incidents as were inherent in its nature. As for instance, if a testator gave a certain sum of stock to trustees, to pay the dividends to *A.* for life, and on his decease to *B.* for life; here, if *A.* died before the dividend day, he loses his benefit in the next payment; but had the testator said, that *A.* should have a portion of dividends accruing between the dividend day and *A.*'s death, no one will deny, that this is a trust which equity would carry into effect in *A.*'s favor. Another instance in which equity gives its aid, is, when a testator divides a renewable lease among parties, by way of life interest and remainder, and sufficient intention is shewn that he intends to keep it on foot for the benefit of all; equity will interfere if no fund is provided for renewals, and make each contribute his quota, otherwise the party first taking will take it without any other qualification than the lease puts upon him. I put these as instances applying equally to all other continuing payments mentioned in the act. My position, therefore, now amounts to this; that under the first part of the 2d section, all payments, whether determinable or continuing, become apportionable, and that thereby the entirety of the contract being destroyed, the parties at once take that which they could have taken by stipulation in their contract, and by remedy arising independent of the second part of the 2d clause, either at law or equity according to circumstances; and that such second portion of the clause is a qualification of the remedy previously arising, and not a remedy-giving clause. The second portion merely states that the parties shall have the same remedies as they *would have had* for recovering the entire rents, &c., if they had become payable. Will any one tell me that this is giving a remedy? The very words themselves point out that there is a remedy in existence, but that it is requisite to restrain the exercise of such remedy until such time as the full payment, of which the apportioned part shall form a part, shall become payable; with a still further restriction in favor of a lessee not being annoyed in having to make a payment to two different persons, of different portions of his rent. That this creates any new remedy I must beg leave to deny; on the contrary, it merely restrains a previous right; and in the case of a lessee paying a continuing rent, it changes (I

had nearly said gives) the remedy (which the party would have against the lessee), from being against the lessee to be against the party receiving from the lessee. S. W. S. asks, "besides, if it was intended to confer on some only of the parties included in the first of the 2d section, the remedies they may have for the recovery of their annuities, why is the clause introduced by the words, 'and every such person'?" Now I conceive, that if the legislature had intended the clause to apply to all the previous named persons, it would certainly have used the terms "and all such persons," as being more expressive of a body of people, than the making "person," in the singular, represent a body; without, therefore, S. W. S. means to contend, that the first portion of the clause does not give a right to an apportionment both in determinable and continuing payments, &c., and as incident to such right a remedy either in law or equity according to circumstances; I must beg leave to say, that I conceive, that as the legislature has made use of words which single out particular individuals, which they certainly do, viz. "every such person," "where the entire portion," and such words being found in a clause which is a restraining clause, must be taken strictly, and therefore cannot be made to apply to such persons who only have an interest in determinable payments, &c. Suppose a clause of the like effect in the Slavery Bill as thus:—All slaves shall be free from the passing of this act, *and that every such person, when a native of Barbadoes, shall wait a year later for his freedom.* On the passing therefore, of the act, all who did not come within the restrictive clause, would there and then be free. To hold the contrary, would be to put every one under the restraint, which is clearly confined to some only of such persons, viz. such as are born within Barbadoes. In the present case, *reddendo singulis singulis*, every such person as takes a portion of a continuing interest, shall be postponed in following up his remedy till the time the full payment was due; but every person who has only a determinable interest is not within such restriction, and therefore not restrained by the act.

There are several minor points that I do not conceive it necessary for me to notice, save to prevent it being said I pass them by. I am told I have forgotten that simple annuities are not the only payments provided for under the act; on reference to my former remarks, it will be found I added an &c. after the words payments, annuities, rents, &c., thereby shewing that I used each phrase promiscuously, including other payments, or rather all payments coming under the act. S. W. S. seems to have fallen into his error from supposing that the act gives a remedy as well as a right; while in fact it gives only the latter, and restrains the remedy in certain cases.

With respect to the point on the Exchange of Land in Common Fields, I must admit, that the word "for," as noticed by S. W. S., puts my argument *hors de combat*. M.

## NEW BILLS IN PARLIAMENT.

## EXECUTION OF CRIMINALS IN THE COUNTY OF CHESTER.

THIS is intitled, "A Bill to explain an Act of the first year of His present Majesty, for the more effectual Administration of Justice in England and Wales, so far as regards the Execution of Criminals in the County of Chester."

The preamble recites, that by the 11 G. 4, and 1 W. 4, c. 70, intitled "An Act for the more effectual Administration of Justice in England and Wales," the jurisdiction of His Majesty's Court of Session of the county palatine of Chester was abolished; and it was enacted, that the assizes should, for the trial and disposal of all matters criminal and civil in the county of Chester, be held under commissions of assize, and other writs and commissions as usual for the counties in England, and that all laws then in force relating to the execution of such commissions when issued for England, should extend and be applied to the execution of the commissions issued for the county of Chester.

It also recites, that since the passing of that act, doubts have been entertained whether the sentence of death pronounced upon criminals for offences committed within the county of Chester ought by law to be executed by the sheriff of the county of Chester, by the sheriffs of the county of the city of Chester, or by the constable of the castle of Chester. That the constable of the castle of Chester has the custody of all persons committed and convicted for offences committed within the county of Chester; and it being expedient to remove such doubts, and to impose upon the person having the custody of the criminals for offences committed within the county of Chester, the duty of executing and carrying into effect the judgment pronounced upon such criminals respectively, it is proposed to be enacted as follows:

That from and after the passing of this act, the constable of the castle of Chester for the time being, shall execute the sentence and judgment of death upon criminals condemned to die for offences committed within the county of Chester, in the same manner and form as the sentence and judgment of death pronounced upon criminals condemned to die in other counties of England and Wales are now executed by the sheriffs of such counties respectively.

[Since this bill was printed an amendment has been made.]

## PRACTICAL POINTS OF GENERAL INTEREST.

No. LXXIV.

## FALSE HUSBAND.

THE point decided by the following case, we believe to be new.

William Starr bequeathed one sixth of the produce of his real estates to trustees, upon trust to invest the same, and pay the dividends into the hands of his daughter, Georgiana Whatford, or of such person as she should appoint, to her separate use; and after her decease, upon trust for the benefit of her children. The testator died in 1807. The ceremony of marriage was afterwards performed between Georgiana Whatford and a person named Wright, who was in fact married at the time to another woman. Georgiana Whatford lived with Wright, in ignorance of the fact of his prior marriage, and received the dividends of the trust fund until the year 1816, when she and her supposed husband contracted to sell her interest in the legacy to John Sturge, for the sum of 333*l.* 14*s.*, which sum was paid to her and Wright; and a deed of assignment to Sturge, dated the 22d of June 1816, was executed by them jointly. The bill was filed by Sturge against the representative of the surviving trustee of the trust fund, and Georgiana Whatford, for the purpose of obtaining the benefit of the assignment.

On the part of the defendants, it was contended by Mr. *Treslove*, that the transaction was tainted by the fraud of one of the parties to it; and that the deed of assignment, having been obtained from a person assuming a false character, and imposing as well upon Georgiana Whatford as upon the plaintiff, was not such an instrument as a court of equity would carry into execution. It was like the case of a legacy given to a person in a character which did not belong to him, and which he had fraudulently induced the testator to believe that he sustained. In such a case, the Court adopted the rule of the civil law, Dig. Lib. 35, tit. 1. l. 72, s. 6: and the legacy will fail.—*Kennell v. Abbott*, 4 Ves. 802. It was also insisted that Wright ought to have been made a party to the suit.

The *Master of the Rolls*.—The false character under which Wright acted cannot affect the validity of this transaction. The property was Georgiana Whatford's; and the instrument by which it was assigned was her instrument, not her supposed husband's. She might not have executed such an instrument had she been aware of the fraud practised upon her by Wright; but that fraud could not affect the rights of a *bona fide* purchaser. Wright's participation in the execution of the instrument must be considered as nugatory. It is not necessary, therefore, that he should be a party to the suit.

*Sturge v. Starr*, 2 M. & K. 195.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## COSTS—SOLICITOR'S LIEN, GENERAL OR LIMITED.

*Held, that a solicitor has a lien on the fund recovered from his client, in the principal suit, for his costs generally in other suits at law and equity conducted for the same client, and connected with the main suit, and that notice of such lien to the trustee of the fund before he parts with it, makes him liable.*

This was an appeal motion from an order of the Vice Chancellor, by which his honor refused to allow the solicitor his costs generally, out of the funds in the cause. It appeared, that the solicitor had been concerned for the defendants in the cause, as their attorney in an action at law, and also in defending them against another suit in this Court, upon points in both suit and action which were closely connected with the matter of the present suit. Upon a decree being pronounced in their favor, the solicitor claimed to have a *lien* on the funds to which the defendants were declared to be entitled, for his costs generally, and he gave notice of that *lien* before the money was paid over to the defendants by the trustee who received it on their account. The trustee notwithstanding the notice, and in defiance of it, paid the money over to the defendants. The solicitor then applied to the Court for an order to have the whole of his costs taxed by the Master, and that the amount found due to him might be paid by the trustee. The application was resisted on the part of the trustee, who contended that no such *lien* could operate on him; and even if it did, that it only extended to the particular suit, and not to the general costs incurred on the part of the solicitor's clients. The *Vice Chancellor* being of opinion, that the *lien* was thus limited, pronounced an order to that effect; and against that order the solicitor now appealed.

Mr. *Kindersley* argued in support of the appeal, and Mr. *Lloyd* against it.

Among the cases referred to on both sides, and in the judgment afterwards, were *Turner v. Gibson*, 3 Atk. 720; *Read v. Dupper*, 6 T. Rep. 361; where the principle of a solicitor's *lien* is clearly laid down by Lord Kenyon; *Middleton v. Hill*, 1 M. & Selw. 240; *Ex parte Price*, 2 Ves. sen. 407; *Ex parte Stirling*, 16 Ves. 258; *Lenn v. Church*, 4 Madd. 391, and *Worrall v. Johnson*, 2 Jacob & W. 218; and also *Hullock on Costs*, 523 to 534. But it was admitted, that none of the cases went to the extent to which the doctrine of *lien* was sought to be applied in the present case. In the cases of *Lenn v. Church*, and *Worrall v. Johnson*, in which the question was raised, no direction was given on it, but the dictum of the *Vice Chancellor* in the former was mistaken for a judgment; some cases were also cited upon the effect of notice to the trustees of a fund.

Lord Chancellor *Brougham*, after going through the facts admitted on both sides, and advertg to the cases of *Barnesley v. Powell*,<sup>a</sup> and *Mitchell v. Oldfield*,<sup>b</sup> said he was of opinion, that the solicitor had in this case a general *lien* for all his costs incurred on the part of the defendants, in litigating the matters at issue in connection with the suit in this Court, and that a trustee having received regular notice of the *lien*, was bound not to part with the money till the claim was satisfied. His Lordship took a view of the cases, and of the practice which had prevailed with respect to *liens*, since the time of Lord Mansfield, and took occasion to observe, that although now so thoroughly established, it was by no means of ancient practice. He directed the bill of the solicitor to be taxed, and that the trustee should then pay so much as might be found due on all the proceedings in which the solicitor had been concerned for the defendants in the cause.

*Townsend v. Reed and others*, at Westminster, M. T. 1834.

## Vice Chancellor's Court.

## EXECUTORS DE SON TORT.

*Held, that persons who possessed themselves of the personal estate of a testator without probate, and who after suit commenced against them for an account, handed the proceeds over to another, who took out administration also after suit, and wasted the estate, are liable to make good the same.*

This was an exception to the Master's report. The bill was filed by the next brother, and heir at law of a testator, against his father and two other brothers, charging them as executors *de son tort*, with having taken possession of the testator's personal estate, and praying for an account of the same, and that the purchase money of real estate contracted for by the testator, and to which the plaintiff was become entitled, might be paid out of it. It appeared from the admissions of the two brothers, defendants, that the father had obtained letters of administration with the will annexed since the bill was filed, and that they had paid to him as the legal personal representative of the testator, the part of the personal estate that came to their hands. The father did not appear at all, and could not be found. The Master in his report, disallowed the payments alleged to be made to the father, in discharge of the other defendants.

The case having been argued upon exceptions to the report—

His Honour the *Vice Chancellor* said, there appeared to be manifest fraud and collusion between the defendants. They admitted the receipt of part of the testator's estate, and pretended to be willing to account for it; but instead of retaining the money or paying it over into Court, they paid it over to the father, the other wrong doer, and that after the suit

<sup>a</sup> Amb. 103.

<sup>b</sup> 4 T. Rep. 123.

against them was commenced, under the pretence that they were bound to pay it to him as the legal personal representative. But an executor *de son tort* cannot discharge himself from the claims of a creditor, in which character the plaintiff stands here against the testator's personal estate, by a payment to the legal personal representative after suit commenced. The exception is overruled.

*Layfield v. Layfield*, at Westminster, Michaelmas Term, 1834.

### King's Bench Practice Court.

AWARD.—ORDER OF NISI PRIUS.—RULE.—AMENDMENT.—INTEREST.

*A rule for setting aside an award cannot be amended. Under what circumstances an application to set aside an award may be made after the regular time.*

*A plaintiff is entitled to interest for money kept idle pending a negotiation for purchase premises, when that is rendered fruitless by defendant not making a good title.*

In this case an order of *nisi prius* was made, referring it, together with all matters in difference, to a gentleman at the bar, with directions to him to report specially the facts of the case, and to raise any point of law which the parties might require. He made his award; and an application was afterwards made in due time to set it aside, on the ground of certain objections which were apparent on the face of it.

On shewing cause against the rule, it was objected, that it had been drawn up without having a copy of the award attached to it, nor any reference on the face of the award to the award. The Court therefore could not look at the award.

This was admitted as an objection; but an application was made to amend the rule.

*Patterson, J.* said, he could not allow an amendment of the rule. If it were drawn up on reading the award, an affidavit must be made to shew that it was in the same state as it was at the time of drawing up the original rule. The rule would then appear to be drawn up on reading an affidavit dated after it had been granted.

Rule discharged.

An application was then made to set aside the award on two grounds; the first was, that too many defendants had been joined; and, secondly, that the arbitrator under the clause in the submission had directed the defendants to pay certain sums of money by way of interest on money preserved unoccupied by the plaintiff. This was for a breach of covenant in not making a good title to certain premises which the plaintiff entered into a treaty to purchase. The premises in question were vested in certain trustees, to the use of certain other persons. The contract had been entered into with the trustees, and the parties interested signed a memorandum, authorizing the auctioneer to proceed with the sale. The action was, however, brought against the persons who signed the memorandum, as

well as the trustees. While the negotiations were pending, the plaintiff induced two friends to keep a sum of money idle at their bankers, for which he was to pay interest so long as it was kept idle, with the view of completing the purchase, if a good title were made. The title not being made, the negotiation was broken off. The arbitrator allowed interest for the sums so kept idle.

Cause was shewn against [this rule in the first instance; and it was contended, first, that the Court could not now grant a rule to set aside the award, the whole of the term next after its publication having been allowed to pass; and, secondly, that the arbitrator was right in allowing interest, the money having been kept idle expressly for the purpose of this purchase. *Cur. adv. vult.*

*Patterson, J.* (after taking time to consider) thought the application might be entertained, as the original rule had been granted in proper time, enlarged to the following term, and then discharged on a purely technical objection. If that objection had been allowed in the first term, leave would certainly have been given to move again in that term. As to the second objection, he was of opinion, that the plaintiff was entitled to the interest directed by the arbitrator to be paid to him. As to the number of defendants, he thought too many had been joined; and therefore the plaintiff must be nonsuited.

Rule accordingly.—*Sherry v. Oke*, H. T. 1835. K. B. P. C.

### Eschequer of Pleas.

ATTACHMENT.—ATTORNEY AND CLIENT.—PERSONAL SERVICE.—WAIVER.

*When appearing on a rule nisi for an attachment, is a waiver of personal service.*

In this case a Judge's order had been obtained, which was afterwards made a rule of Court, for the purpose of compelling an attorney to deliver to his client a bill of costs; this however, he had disobeyed, and a rule *nisi* for an attachment was now granted.

On shewing cause, an objection was taken to the affidavit of service, it not stating that personal service had been effected, which it was submitted, it ought to have done, there being an affidavit denying personal service.

*Per Curiam*.—The party does away with the necessity of personal service, by appearing as he does in this case by counsel. If he had not so appeared an affidavit of personal service could not be dispensed with. The present rule therefore must be absolute; but the attachment will not issue until the expiration of a month.

Rule absolute accordingly.—*Levy v. Duncombe*, H. T. 1835. Excheq.

HUSBAND AND WIFE —AFFIDAVIT TO HOLD TO BAIL.—FALSE IMPRISONMENT.—MALICIOUS ARREST.

*If a defendant is held to bail for goods sold and delivered to his wife previous to his*

*marriage, the affidavit must allege them to have been delivered at his request.*

In this case a rule *nisi* had been obtained for discharging the defendant out of custody, on entering a common appearance, on the ground of an irregularity in the affidavit to hold to bail. It stated the action to be for money expended for, and goods sold and delivered to, the defendant's wife, before her intermarriage with the defendant; but did not state the money to have been expended by the plaintiff, or at the defendant's request.

Cause was shewn against this rule; when *Parke, B.*, directed it to be made absolute, with costs, with liberty to the defendant to sue for a malicious arrest, but not to bring his action for false imprisonment.

Rule accordingly.—*Gray v. Shepherd*, H. T. 1835. Excheq.

**SHERIFF.—TROVER.—SEIZURE.—EXPENSES.—CONSEQUENTIAL DAMAGE.**

*The sheriff is entitled to retain in his hands the amount of expenses necessarily incurred by him, in selling goods for which an action of trover is afterwards brought.*

This was an action of trover brought by the plaintiffs, as assignees of a bankrupt, against the defendant, the sheriff, to recover the value of certain goods improperly seized by him. A verdict having passed for the defendant, application was afterwards made to set that verdict aside, and enter one for the plaintiffs for 6*l*. The only point for the consideration of the Court was, whether the jury, in estimating the amount of damages, had power to deduct the costs of the sale.

*Per Curiam*.—We are of opinion, that the jury were right in deducting the amount of such costs as must necessarily be incurred in the sale of the goods. It also appears to us, that the point was properly left to the jury as a question of damages. We cannot, therefore, grant the rule now prayed.

Rule refused.—*Clarke and another v. Nicholson*, H. T. 1835. Excheq.

**PRIVILEGE FROM ARREST.—KING'S CHAPLAIN.—SUMMARY APPLICATION.**

*When a King's chaplain was arrested, the Court discharged him on a summary application, as privileged from arrest.*

The defendant in this case, who was chaplain to the King, was arrested and gave a bail-bond. A rule *nisi* was afterwards obtained, requiring the plaintiff to shew cause why that bail-bond should not be delivered up to be cancelled, on the ground of the defendant being the King's servant, and privileged from arrest.

Cause was shewn against this rule, when it was contended, that the defendant was not entitled to that privilege, he being at the present time rector of a living in Suffolk, and had only done duty once before the King, during the last two years and a half. The King's chaplain was not, as chaplain, privileged always.

*Per Curiam*.—We are of opinion, that the King's chaplain is at all times liable to be called on to do duty, and consequently is a privileged person. The present rule therefore must be made absolute.

Rule absolute.—*Byrn v. Doctor Dibdin*, H. T. 1835. Excheq.

**ATTORNEYS TO BE ADMITTED.**

*Easter Term, 1835.*

*(Concluded from p. 366.)*

*Clarks' Names.*

Richards, James George, Sun Fire Office, London.

Rising, Robert, the younger, 15, Harpur Street, Red Lion Square.

Roberts, Henry Boydon, 32, Upper Seymour Street, St. Pancras.

Rodwell, Henry, Walsham le Willows, Suffolk.

Rushworth, Charles Harrington, 1, Gray's Inn Square.

Salter, George, Ellesmere, Salop.

Savage, Edward Gregory, Evesham, Worcester.

Seago, William Rix, Great Yarmouth.

Simpson, Thomas, Scarborough, York.

Smith, John Ashmore, Bedford Street, Bedford Square.

Sutcliffe, William, Hebden Bridge, Halifax.

*To whom articulated.*

Alexander Cosmo Orme, King's Bench Walk; assigned to Charles Ranken, Gray's Inn.  
William Forster, Norwich.

John Philpot, 3, Southampton Street, Bloomsbury.

John Ambrose, Mistley, Essex; assigned to Messrs. Golding & King, Walsham, aforesaid.

Edward Rushworth, Kingston-upon-Hull; assigned to George Allenby Rushworth, 1, Gray's Inn Square.

Robert Morrall, same place.

Joseph Shipton, Warwick; assigned to Edward Savage, Evesham, aforesaid; reassigned to the said Joseph Shipton.

George Wells Holt, same place.

Henry Eustatia Wright, Stockton, Durham.

Edward Kem Jarvis, Hinckley, Leicester.

John Sutcliffe, same place.

*Clerks' Names.*

Tebbutt, Thomas Johnson, 9, Union Court, Old Broad Street.  
 Thomas, George Evan, 16, Furnival's Inn.  
 Turner, Robert Ridgway, Manchester.  
 Turner, William Henry, 17, Prince's Square, St. George.  
 Vallance, Henry, 20, Essex Street, Strand.  
 Wagstaff, John Reid, Bradford, York.  
 Walker, Thomas, Calthorpe Street, Gray's Inn Road.  
 Wallington, Benjamin, 24, Hunter Street, Brunswick Square.  
 Waterman, John Marshall, Maidstone.  
 Waters, Thomas, the younger, Worcester, co. Worcester.  
 Watson, Thomas Cripps, 9, Goulden Terrace, Islington.  
 Watson, William Duncan, 6, Bolton Place, Queen's Elm, Chelsea.  
 Whalley, Francis Warwick, 78, Chancery Lane.  
 Wilde, Charles Norris, 21, College Hill.  
 Williams, William,  
 Willis, Charles William, 37, Howland Street.  
 Woolley, Charles Adam, the younger, 11, New Square, Lincoln's Inn.  
 Worship, William, 12, River Street, Myddleton Square.  
 Worship, Francis, 12, River Street, Middleton Square.  
 Wright, William G., 11, Lancaster Place, Strand.  
 Young, Adolphus William, 3, St. Mildred's Court.

*To whom articulated.*

Thomas Tebbutt, same place; assigned to Hugh Fraser, same place.  
 William Whitter, Worthing; assigned to George Mounsey Gray, Staple Inn.  
 Richard Claye, Manchester.  
 Henry Jager, King's Place, Commercial Road; assigned to Samuel Argill, 71, Whitechapel Road.  
 Thomas Binns, same place.  
 William Hudson, same place.  
 John Thomas Miller, 3, Furnival's Inn.  
 Robert Winter, Bedford Row.  
 William Waterman, Tenterden, Kent; assigned to Charles Hoar, Maidstone.  
 Robert Gillam, same place.  
 William Richardson, York.  
 Isaac Wrentmore, 77, Chancery Lane.  
 William Berry, Exeter; assigned to John Bethell, Lincoln's Inn.  
 Edward Archer Wilde, 21, College Hill.  
 William Williams, Carnarvon, co. Carnarvon; assigned to Henry R. Williams, Penrhos, near Carnarvon.  
 Thomas Phippard, Wareham, Dorset; assigned to Alfred Bell, Lincoln's Inn Fields.  
 William Henry Surman, 11, Lincoln's Inn; assigned to William Harry Surman, 11, Lincoln's Inn.  
 Harry Verelst Worship, Great Yarmouth.  
 Harry V. Worship, Great Yarmouth, Norfolk.  
 Beauvoir Brock, Loughborough, Leicester.  
 John Adolphus Young, St. Mildred's Court.

COMMON PLEAS.

*Clerks' Names.*

Parker, William Miller, the younger, Blackford, Somerset.  
 Phillpotts, Thomas Griffin, the younger, Monrow Street, Menmouth.

*To whom articulated.*

John Richardson, same place.  
 Thomas Phillpotts, the elder, same place.

RE-ADMISSIONS IN THE KING'S BENCH.

Meredith, Edward Turner, No. 15, Magdalen Terrace, Bristol.  
 Robinson, John Jackson, formerly of Barnard's Inn, now of York.

NOTES OF THE WEEK.

HOUSE OF LORDS.

*Bills for second reading.*

<i>Title of the Bill.</i>	<i>Proposer.</i>
Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Oaths Abolition.	Duke of Richmond.

HOUSE OF COMMONS.

*Bills to be brought in.*

Enfranchisement of Co-	Sir J. Campbell.
pyholds, &c.	
Amending the Law of	Sir J. Campbell.
Tenure.	
Amending the Law of	Sir J. Campbell.
Escheat.	
Improving the Admini-	Attorney General.
stration of Justice in	
Ecclesiastical Causes.	



Illegal Securities. Mr. Rolfe.  
 Abolishing the Jurisdiction of the Ecclesiastical Courts in Tithes. Mr. C. Buller.  
 To give Prisoners full Defence by Counsel and Attorney. Mr. Ewart.  
 To amend the Law of Libel. Mr. O'Connell.  
 To amend the Poor Law Act. Mr. Trevor.  
 Bankruptcy Funds. Mr. Rolfe.  
 Registration of Births, &c. Mr. Wilks.  
 Highways. Mr. Lefevre.

#### Second Reading.

Abolishing Imprisonment for Debt, &c. Sir J. Campbell.  
 Amending the Law of Wills, &c. Sir J. Campbell.

#### Bills in Committee.

Chester Criminals Exclusion. Mr. Jervis.

#### STANDING ORDERS.—PRIVATE BILLS.

The following are the Select Committee appointed Feb. 25th, 1835, to whom shall be referred all Reports from Committees on petitions for Private Bills, in which it shall be stated, that any of the Standing Orders of this House have not been complied with; and to report their opinion thereupon from time to time to the House: Sir John Wrottesley, Mr. Littleton, Mr. Byng, Sir Matthew White Ridley, Mr. Spring Rice, Mr. Estcourt, Mr. Bonham Carter, Lord Viscount Clive, Mr. Pendarves, Sir Edward Knatchbull, Lord Viscount Ebrington, the Earl of Surrey, Lord Viscount Morpeth, the Marquis of Chandos, Sir Tho. Freeman-tle, Mr. Hume, Lord Viscount Sandon, Mr. Tooke, Mr. Wilbraham, Sir Robert Price, Sir Charles Burrell, Mr. Evelyn Denison, Mr. Robert Palmer, Mr. Loch, Mr. Guest, Mr. Wilson Patten, Mr. O'Connell, Mr. Robert Clive, Sir Robert Inglis, Lord Viscount Lowther, Mr. Alderman Wood, Sir John Hay, Mr. Alexander Pringle, and Sir James Graham.

The Committee have power to send for persons, papers, and records. Five to be a Quorum.

#### ORDERS RELATING TO PRIVATE BILLS.

The House will not receive any petition for private Bills after Friday the 18th of March.

No private Bill can be read the first time

after Monday the 18th April, nor any report received of such private Bill after Monday the 22d of June.

## ANSWERS TO QUERIES.

### Property and Consanguinity.

DEVISE. P. 304.

*S. R.* takes an estate tail with a vested remainder in fee, under the rule in *Shelly's case*, subject to a contingent charge of 50*l.* a piece in favour of *I. S.* and *F. S.*, payable in the event of there being no heirs of the body of *S. R.* living at the time of her decease. It cannot be supposed that the remainder in fee is contingent, from the previous words, "In default of the heirs of the body of the said *S. R.* living at the time of her decease," for they seem to relate only to the charge. The heir at law of *S. R.* must claim through her by descent, and take nothing by purchase under the will.

E. P.

### Common Law.

GAME LAWS.—SURCHARGE. PP. 207, 208.

In reply to *S. W.'s* query, I would refer him to the acts 52 G. 3, c. 93, sched. L. rule 12, and 5 G. 4, c. 44, s. 7, under the authority of which surveyors of taxes make the increased charges for game certificates; and to 43 G. 3, c. 99, s. 24, requiring the person so surcharged to appear before the local commissioners; and to sec. 26, of the said last mentioned act, which states "that the said commissioners *shall not* upon the hearing any such appeal, make an abatement or defalcation in the charge made by the surveyors as aforesaid, but the surcharge shall stand good unless it shall, upon the hearing of such appeal, appear to the commissioners then present, or the major part of them, *by examination of the appellant upon oath, or by other lawful evidence to be produced by him or her*, that such person is over-rated by such surcharge, &c.; and such surveyor may then and there attend to give his reasons in support of the said surcharge, and may, *if he or they think proper*, produce any lawful evidence in support of the same. It is presumed a perusal of the foregoing sections of the acts will leave no doubt in *S. W.'s* mind that the commissioners can oblige the party to pay the duty, unless he will swear that he has not killed, or been in pursuit of game, &c.; or, more particularly, *been in pursuit of game*, as the act of killing would render appellant liable to the 20*l.* penalty, under 52 G. 3, c. 93, sched. L. rule 13. The only decision I am aware of that has been given in any way touching the point, was by the Judges, on the 18th of June, 1834, on an assessed tax case, No. 974, from the county of Warwick, city of Coventry, which was in the discretion of the commissioners, and not in their power, or the words of the act referred to.

T. L.

## GAME LAWS.—RABBITS. P. 203.

The exception in the act 52 G. 3, c. 93, as to the taking and destroying of conies, is not repealed, and the 5th sec. of 1 & 2 W. 4, c. 32, expressly provides that nothing in that act contained (except as therein mentioned) should affect the existing laws respecting game certificates. It is therefore presumed, that a person may shoot rabbits on a farm, by the tenant's direction or command, without a certificate, if the landlord has not reserved them.

T. L.

## LODGING AND BOARD.—NOTICE. P. 335.

In reply to "Adviser's" query, it appears to me, that the agreement to pay at the rate of 80*l.* per annum is merely a mode of ascertaining the amount of remuneration for the board, lodging, &c.; and that the words "payable quarterly," fix the times and mode of payment. As there was no agreement as to the duration of the arrangement, nor any agreement as to notice to quit, I conceive the arrangement to be determinable at the will of either party; for I consider the board to be the essential part of the contract, and therefore to draw it out of the general rule laid down as regards tenancy and rent. To determine an agreement, notice is only necessary in cases of tenancy, or where it is required by agreement; in all others the expression of the will is sufficient.

W. M. W.

## UNSTAMPED NOTE. P. 336.

The holder of the note cannot recover the amount of it, inasmuch as the note, not being stamped, cannot be received in evidence. If the holder were to proceed and obtain judgment by default, I think no objection could afterwards be made. The master certainly would not compute: he doubtless would compel the plaintiff to go to inquiry. See Chitty on Bills, Index, tit. "Stamps."

J. S.

## QUERIES.

## Law of Property and Coheirship.

## EXECUTORY DEVISE.—DESCENT.

In 1790 *A.* devised certain fee simple lands unto *B.* and his heirs for ever; but in case *B.* should happen to die without leaving any issue of his body lawfully to be begotten then living, then unto *C.* (brother of *B.*) and his heirs for ever. *B.* and *C.* survived *A.*, and died intestate, and without issue; *C.* in 1800, and *B.* in 1835. *E.* now claims the property as heir to *C.*, under the rules of descent prior to the 3 & 4 W. 4, c. 106, and *D.* claims as heir of the half-blood to *B.*, under the provisions of that statute. Does such statute apply to this case; and to which of the parties does the property now lawfully belong?

J. S.

## COMMON LAW.

## AFFILIATION.—CORROBORATIVE EVIDENCE.

With regard to 4 & 5 W. 4, c. 76, s. 72, by which fathers of bastard children may be compelled to maintain them, what corroborative testimony is required? In the country we are all, including magistrates, in the dark as to the evidence required. Is it enough to prove that the woman, at the time the event charged is supposed to have taken place, mentioned the circumstance to a female friend?—or that any other person should have observed at that time a certain degree of intimacy between the parties?

A COUNTRY ATTORNEY.

## JOINT-TENANCY.—WIFE.—ADMINISTRATION.

*A.* purchased two shares in a road, in the joint names of his daughters, *B.* and *C.*, who both married, and the husbands received the annual interest paid on the shares. *B.* died, her husband surviving; and afterwards *C.*, her husband and two children surviving. Each husband took out administration to his wife's estate. *C.*'s husband afterwards died, leaving the two children, without having sold his interest in the shares, which still remain in the maiden names of *B.* and *C.* He left also a second wife, whom he made sole executrix of his will. Did the marriages sever the joint-tenancy? Was *C.*'s husband entitled to his wife's interest in the shares, without administration? Or can the children by *C.* take out administration *de bonis non*, and claim her interest? And are they not the only persons entitled to do so? A reference to cases is particularly requested.

G.

## ANNUITY.—RESIDUE.

*A.*, by will, gave 1500*l.* to trustees, upon trust to invest, and pay three several annuities out of the interest or dividends, to *B.*, *C.*, and *D.*; and the surplus interest, with the trust fund, (that is to say) after the death of each of the annuitants, so much thereof as should be in proportion to the annuity or respective annuities of the deceased, to his two nieces, *E.* and *F.* The fund was invested, and the annuities paid. The nieces both married, and *E.* died, her husband surviving; and afterwards *F.*, her husband and two children surviving. Subsequently two of the annuitants died. The husbands took out administration to their respective wives, and persuaded the trustees to transfer to them the whole fund on an indemnity. *F.*'s husband is since dead, leaving the two children by her, and his second wife him surviving, having first made his will, and appointing this wife sole executrix. The last annuitant is on her death-bed. Are not *F.*'s children entitled, on the death of the annuitant, to take out administration *de bonis non*, and claim from the trustees a moiety of that portion of the trust fund which should have still remained invested to answer the last annuity? A reference to cases is particularly requested.

G.

## POWER OF ATTORNEY.—PARTNERSHIP.

*A.* and *B.*, trading in London under the firm of *A. and Co.*, have a debt due from a firm in New South Wales, and wish to pass a power to their correspondent in that colony for the recovery of the same. *A.*, however, is not in Europe; and *B.*'s solicitor informs him that he (*B.*) cannot pass a power on behalf of himself and partner, for the recovery of the debt in question, as the party against whom it is intended to operate would dispute the validity for want of the signature of *A.* Is the above opinion correct? H. C.

## MISCELLANEA.

## ANCIENT PROFESSIONAL FEES.

It is difficult to ascertain what were the emoluments of our lawyers in early times. The following entry is said to exist in the churchwardens' accounts of *St. Margaret's, Westminster*, for the year 1476:—'Also paid to *Roger Fylpott*, learned in the law, for his counsel given, 3s. 8d., with 4d. for his dinner.' The income of *Sir Thomas More*, in the reign of Henry 8, (the earliest case with which we are acquainted), was 400*l.* He told his son-in-law, *Mr. Roper*, that he acquired by his profession about this sum annually, 'with a good conscience.' 'This,' observes *More*, in the life of his grandfather, 'was a large gain in those days, when lawyers sped not so well as now (Charles the First's time).—(*More's Life of More*, p. 30.)

In the reign of James I, the profits of lawyers had probably increased considerably. 'There is a common tradition in *Westminster Hall*, says *Mr. Barrington*, that *Sir Edward Coke's* gains equalled those of a modern Attorney-General. This is probably exaggerated; although *Bacon*, in the same reign, appears to have made 6000*l.* a-year as Attorney-General. *Brownlow's* profits likewise, one of the Prothonotaries during the reign of Queen Elizabeth, were 6000*l.* per annum. I received this account,' continues *Mr. Barrington*, 'from one who had examined *Brownlow's* books, and who also informed me that *Brownlow* used to close the profits of the year with *laus Deo*, and when they happened to be extraordinary, with *maxima laus Deo*.'—(*Obs. on Anc. Stat.*, p. 509.)

In the reign of Charles 2, we learn the value of the Attorney's place from the life of Lord Keeper *Guildford*. The Attorney's place was (with his practice) near 7000*l.* per annum; and the emolument of the Common Pleas (the place of the Lord Chief Justice) not above 4000*l.*—(vol. i. p. 183.) The gains of a man in first-rate practice at the Bar scarcely seem to have been proportionably great.

My Lord (*Sir Matthew Hale*) said that 1000*l.* a-year was a great deal for any common lawyer to get, and *Mr. B.* said, that *Mr. Winnington* did make 2000*l.* per year by it. My Lord answered, that *Mr. W.* made great advantage by his city practice, but did not believe he made so much of it.—(*Seward's Anecdotes*, vol. iv, p. 418.)

Some idea of the amount of counsel's fees in the reign of James 2, may be formed from the 'account of the expenses sustained by the seven bishops on their prosecution,' &c.—See *12 State Tr.* p. 516.) The largest fee given on this occasion was twenty guineas, and the total amount paid to counsel, 240*l.* 16*s.*

*Westminster Hall.*

## THE EDITOR'S LETTER BOX.

## EARLY VOLUMES OF THE LEGAL OBSERVER.

In consequence of several applications from new subscribers, who are desirous of obtaining the early volumes of the *Legal Observer*, the Publisher has arranged for supplying the first four volumes, in boards, at 12*s.* each, and the first and second volumes of the *Monthly Record* at 10*s.* each.

We avail ourselves of the suggestion of a subscriber, to incorporate the *Digest of Cases* and the *Commentaries on the Statutes* for the Years 1833 and 1834, into one volume, and shall continue the same at the close of each year.

ANNUAL DIGEST OF THE STATUTE AND COMMON LAW for 1833.—This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Courts, in the Year 1833. Edited by BARRISTERS. Price 12*s.* boards.

ANNUAL DIGEST of the STATUTE and COMMON LAW for 1834. This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Year 1834. Edited by Barristers. Price 12*s.* boards.

The Queries and Answers of E. J. S.; "Minor;" D. A. L.; and "Discipulus," have been received.

The Letter of a Lawyer's Clerk, does not carry the case farther than has been already stated in the several communications which have been inserted.

# The Legal Observer.

Vol. IX.

SATURDAY, MARCH 14, 1835. No. CCLVIII.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PROGRESS OF LAW REFORM.

WE now resume our enquiries into the general prospects of the profession in the present Parliament. Several important notices of bills to be brought in have been already given; but the novelties of the session have not yet made their appearance. We confess we look forward with great interest to the time when the principal measures shall be discussed; parties appear in a very different aspect from that which they assumed when these bills were last before the legislature, and we cannot at this moment be certain how they will be dealt with; when they are brought forward in a substantive shape, we shall be ready to give our opinion on them. In the meantime, we can only recapitulate what has actually been done.

The Attorney General has given notice, that he will speedily bring in a bill for the establishment of Local Courts. It is to be remembered, that the learned gentleman is at the head of the Common Law Commission, and signed the report (the Fifth) in favor of Local Courts. It may be presumed, therefore, that his proposed bill is in some degree founded on that Report.

Sir John Campbell has introduced a bill for the abolition of Imprisonment for Debt, except in cases of fraud; and here it is also to be observed, that the Attorney General was one of the Common Law Commissioners, who signed the Report (the Fourth) in favor of this alteration, although last session he introduced a bill for a modified abolition, to extend only to debts not secured by any written instrument. Sir John Campbell has also announced bills in pursuance of the Third Real Property Report, to facilitate the

Enfranchisement of Copyholds, and to amend the law of Tenure and Escheat; and in pursuance of the Fourth Real Property Report, introduced a Bill to amend the law with respect to Wills.

The suggestions of the Ecclesiastical Commissioners, contained in their Report for improving the administration of justice in ecclesiastical causes, are also to be carried into effect, by bills which will be introduced by the Attorney General; so that it would seem, that at last the labours of all the learned Commissioners appointed to revise our laws, will be rendered generally available.

The law of Libel is to be taken up by Mr. O'Connell, the Attorney General promising his assistance. Mr. Ewart has renewed his bill for the mitigation of the Criminal Law, by enabling prisoners to be heard by counsel; and several other minor bills have been notified, the state of which will be seen in a subsequent part of this number.

The Lord Chancellor, on Tuesday, introduced bills, to extend the benefits of some of the late improvements in the law, to Ireland; they consist of two of Sir Edward Sugden's acts, and have probably been suggested by him, as Lord Chancellor of Ireland. They relate to commitments for contempt, and for taking bills *pro confesso*, being the English act 11 G. 4, & 1 W. 4, c. 36; and the act to amend the law relating to the property of persons being lunatic and of unsound mind, 11 G. 4, & 1 W. 4, c. 65.

A conversation of some importance took place in the House of Commons on Tuesday, on the presentation of a petition from Mr. Langbridge, the Clerk of the Peace for the

county of Sussex, complaining that he had been put to considerable expense, (70*l.* 11*s.* 2*d.*) in making out returns ordered by the house, and that the magistrates had refused to pay him the amount of his bill out of the county rates; the petitioner had then applied to the Home Office, but without obtaining any redress. Lord G. Lennox, who presented the petition, hoped that some mode would be found for compensating the petitioner. Sir Robert Peel, while he admitted the hardship, entertained doubts whether such a demand could be paid out of the public money. Sir John Campbell considered it to be very unfair, that Clerks of the Peace should perform such duties without remuneration; and many other members complained loudly of the injustice. Mr. Curteis proposed, that every member who moved for a return, should pay a portion of the expense incurred by it.

We trust that this matter will not be allowed to drop here. It is a real grievance, and if it be not remedied, should be brought before the House of Commons in the practical way of a refusal by the Clerk of the Peace to make his return, without his expences being paid.

## PROFESSIONAL ETIQUETTE.

We extract the following note from the last number of Messrs. Carrington and Payne's Reports, p. 636. A work which should collect all such matters, now scattered throughout the Reports, into a short compass, would be useful.

Mr. Carlile, who appeared to conduct his own case, had taken his seat at the table of the Court, with the counsel: but at the sitting of the Court, Mr. Justice Park said, "Mr. Carlile, the bar have a right to those seats, and no one else can be allowed to occupy them; you, therefore, must not conduct your case in that part of the Court. In strictness, a defendant who is on bail, and comes in to take his trial, ought, though not convicted, to stand in the dock where the prisoners do; but that is not usually insisted on, and there is no wish that it should be so in the present case, or that you should be put to inconvenience; and Mr. Clark (the clerk of the arraigns,) has been kind enough to say that he will allow you part of his place."

The defendant left the table, and took his seat at the right hand of Mr. Clark, and there conducted the whole of his case.

In Michaelmas term, 1834, Mr. Hunt appeared in the Court of Exchequer, to move in person for a new trial, in the case of *Stally v.*

*Hunt*, and had taken his seat within the bar; and he rose to address the court from the place appropriated to King's counsel.

Lord Lyndhurst, C. B., said, "Mr. Hunt, we cannot hear you from that part of the Court. Nobody can be heard from that place but King's Counsel, and those who have rank assigned them by his Majesty."

Mr. Hunt.—"Your Lordship allowed me the indulgence of being here when I conducted the trial."

Lord Lyndhurst, C. B.—"That was at *nisi prius*; but, in term time, even gentlemen at the bar are not allowed to take their places within the bar, unless they have rank, as I have already mentioned."

Mr. Hunt made his application from the floor of the Court.

It may be proper to observe, that the distinction "within the bar" does not exist at *nisi prius*. This was mentioned by Mr. Justice Littledale, on the Bail Court being first used as a court of *nisi prius*; and we are informed, that about 30 years ago, when only three King's Counsel were in the habit of attending the Court of King's Bench in London, the senior barristers occupied the front row of the seats appropriated for the bar, together with the King's counsel, precisely as they do at the assizes.

If two counsel are called to the bar on the same day at different inns of court, the one whose name has been longest on the books of the inn of court to which he belongs is the senior; this was so settled in the instance of Mr. Abbott (afterwards Lord Tenterden), and Mr. Peake (afterwards Mr. Serjt. Peake). Both were called to the bar on the same day, the former at the Inner Temple, and the latter at Lincoln's Inn; and as Mr. Abbott's name had been longer on the books of the Inner Temple than that of Mr. Peake on those of Lincoln's Inn, Mr. Abbott always acted as the senior.—6 Car. & Pay. 636, n.

## ON THE ALLOWANCE TO BE MADE TO AN EXECUTOR FOR FUNERAL EXPENSES.

WE shall now state the law respecting a subject of some practical importance—the expense which an executor may incur in the funeral of his testator; and there is a difference as to this as regards creditors and legatees, the law being more liberal in this matter where the rights of legatees only are concerned, than where creditors are interested.

Thus in the case of *Offley v. Offley*,\* 600*l.* was laid out in the testator's funeral; and as legatees only were interested, the

\* Prec. Chan. 261; and see *Stackpoole v. Stackpoole*, 4 Dow. Parl. Cas. 227.

Court allowed the charge, the testator being a person of large property and reputation in his county, and being buried there; but it would have been different had he been buried elsewhere, when so much would not have been allowed.

However, where the rights of creditors are to be considered, the Court is much more strict.

The general rule is, that every person shall be buried according to his degree and quality:<sup>b</sup> and then arises the question, what construction this rule shall receive. In 1695, it is stated that Baron *Powell*, on circuit, considered 11s. 6d. sufficient;<sup>c</sup> and Lord *Holt* decided, that where a testator was insolvent, the only funeral expenses to be allowed were the coffin, ringing the bell, and the fees of the parson, clerk, and bearers (to which Dr. Burn adds the shroud and digging the grave<sup>d</sup>), but no pall or ornaments.<sup>e</sup>

In a later case, Lord *Hardwicke* drew a distinction between the rule in this respect at law and in equity, considering that a court of equity was not bound by the strict legal rule, which he said was a hard one, and which he stated to be, where a person died insolvent, that no more should be allowed for a funeral than was necessary—at first only 40s., then 5l., and at last only 10l. In that case he allowed 60l. as being not too much, especially as the testator had directed that his corpse should be buried at a church within thirty miles from the place of his death.<sup>f</sup>

In a very recent case,<sup>g</sup> the testator had been a captain in the army, and died insolvent, and the executor had applied the sum of 79l. for his funeral; and this was held at law to be too much: but Mr. Justice *Bayley* considered 10l. as too little in the present day—even at law—where the testator was a person of condition; and intimated that 20l. might now be considered to be the proper sum at law, although he would not fix even that sum as the limit.

A case decided at law<sup>h</sup> has been very recently reported, in which this question, among others, was involved, and in which the circumstances were as follows:

<sup>b</sup> See 3 Inst. 202; 2 Bla. Com. 508; 2 Williams on Executors, 636.

<sup>c</sup> *Anon.* Comber. 342.

<sup>d</sup> 4 Burn. Eccl. L. 348.

<sup>e</sup> *Shelly's case*, 1 Salk. 296.

<sup>f</sup> *Stag v. Punter*, 3 Atk. 119. But see Bull. N. P. 143; Selw. N. P. 776; and Williams on Exec. 637.

<sup>g</sup> *Hancock v. Podmore*, 1 B. & Ad. 260.

<sup>h</sup> *Edwards v. Edwards*, 2 Cr. & Mea. 612.

Debt on a covenant in an annuity deed, whereby the testator covenanted for himself, &c., in consideration of natural love and affection, for payment of an annuity of 52l. per annum to the plaintiff. Breach, in nonpayment of 26l. for one half year's annuity. Plea, *plene administravit*. Replication, assets unadministered, and issue joined thereon. At the trial, before *Bosanquet*, J., at the last summer assizes for the county of Carmarthen, the defendant, who was the real as well as personal representative of the testator, admitted assets to the amount of 2987l., but claimed to be allowed for certain payments made as administratrix, amongst which was the sum of 103l. for funeral expenses, and sums paid in discharge of two mortgages, as well as the costs of an action of ejectment by one of the mortgagees, and of a reconveyance to the defendant of the mortgaged premises. A verdict was taken for the plaintiff, with liberty to the defendant to move to enter a nonsuit or reduce the verdict; the Court to be at liberty to exercise the same judgment on the facts as might have been exercised by the jury. In Michaelmas term last, *Chilton* obtained a rule accordingly. After argument, *Parke*, B. (after stating the former cases on the point) observed, that in *Hancock v. Podmore*, as much as 20l. was allowed; and the Court there did not lay it down as a rule that even that sum should be the limit of the allowance where the estate was insolvent, but that it was the proper limit under the circumstances of that case; and went on as follows:—"I take the rule to be, that the executor is entitled to be allowed reasonable expenses; and if he exceeds those, he is to take the chance of the estate turning out insolvent. In this case 103l. were expended; but it is immaterial whether we allow 20l., 30l., 40l., or 50l., as, laying out of consideration the funeral expenses, there will still remain a surplus more than sufficient to satisfy the plaintiff's claim, and to make it perfectly clear that the verdict for 26l. ought to stand."

The conclusion which we are inclined to draw from the whole of these cases is, that now, both at law and in equity, no particular sum is fixed as the limit which will be allowed to an executor for the funeral expenses of his testator; but that the Court will take the whole of the circumstances of the case into its consideration, and decide accordingly. The earlier cases at law may therefore now be considered to be overruled.

## OBJECTIONS TO ABOLISHING IMPRISONMENT FOR DEBT.

The Bill for abolishing Imprisonment for Debt having been again introduced into Parliament by Sir John Campbell, we consider it necessary to re-state the objections to the measure; and we cannot better do so than by extracting the principal parts of the argument of Mr. Serjeant Stephen, who dissented from his brother Commissioners on this important subject.

The following general remarks are material to be considered, before stating the objections in detail :

Debt is either contracted *upon credit*, that is, upon the assurance of the debtor express or implied, that it shall be paid, or it arises by construction of law only, upon the circumstances in which the parties have been relatively placed; as where one man is indebted to another for the produce of his goods, which the former has unlawfully converted to his own use and sold. In the first case, the debtor who fails to pay, is guilty of a breach of contract; and supposing him able to perform it, it seems to result from the very nature of the obligation contracted, that the injured party should have the power of compelling him to do so by arrest; for some means of enforcing payment should be allowed; and (unless there be visible property to seize), no means can be devised more moderate than the confinement of the person. The same principle authorizes imprisonment, whether there be in fact an ability or not; for in the nature of things, so much danger must always exist of a debtor's concealing his property, or being remiss in his exertions to pay, that it is impossible to arrive at satisfactory proof of his ability, without first subjecting it to some test; and no specific test can be devised so mild as that of imprisonment. It is true, that the effect of permitting the creditor to arrest, may occasionally be to deprive of liberty a person who is really without the means of payment; but on the other hand, the effect of withholding that power, would often be to prevent the recovery of debts where the means of payment exist. In this dilemma, it is just that the interest of the creditor should be preferred; because, as between the parties, he is the person injured; and because, when a legal liability has been incurred, it is a fair presumption against him who has incurred it, that he has the means of discharging his obligation. It may be added (though not necessary to the argument), that the case of inability to pay is generally found to comprise some mixture of misconduct; and that a prison is much less frequently than some suppose, the result of unavoidable misfortune.

In the case where the creditor has given no trust, the right is still more manifest; for though there be no breach of contract by the debtor, there is a violation of the duty of payment which the law has imposed upon him; and

on the other hand, the creditor is absolutely without blame, not having to reproach himself with even an incautious or ill founded confidence.

We confine the objections at present to the proposed abolition of arrest *before judgment*. The arguments are still stronger in relation to imprisonment *after judgment*.

1. *If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the absconding of the debtor.*

Supposing the power of arrest in execution to be conceded to the plaintiff, it will of course be of no value unless upon obtaining judgment he finds the person of the defendant accessible to his writ of execution. And even those who think that this power may be safely withdrawn, yet allow that the plaintiff obtaining a judgment, should have access in some manner to the person of the defendant, in order to compel a disclosure and surrender of his property. The danger of his absconding before judgment or execution, is one, therefore, that deserves the highest consideration.

The loss of time involved by an application for a Judge's order prior to arrest, is also a material objection. From a variety of evidence it appears, that already the delay consequent on the necessity of sending down a writ from London, enables debtors in numerous instances to escape, who might otherwise be detained; and this evil would, of course, be much aggravated, if the writ, instead of being sent as soon as ordered, were to be withheld until the case had been considered at a Judge's chambers.

2. *If the power of arrest before judgment be taken away, the creditor will be much more frequently defeated by the removal of property.*

Where the debtor absconds, there is, of course, the highest probability, that with his person he will take care to remove his effects; and if the abolition of arrest would render a personal escape more frequent, it would follow as a consequence, that the property also would be more often placed beyond the reach of legal pursuit.

But this measure would be productive of the same result, even in cases where the person was not withdrawn. It is very difficult to fix an average period for the duration of a suit in the Courts at Westminster; so many varieties are introduced, by taking into account the period of the year at which the proceedings are commenced; the particular Court in which the action is brought; the nature of the action itself; and the manner of the defence. It may be safely stated, however, that where the defendant avails himself of such means of resistance, as are almost invariably in his power, the plaintiff does not upon the average obtain judgment in less than three months; and that in cases presenting more than ordinary difficulty, whether in fact or law, the average is probably not less than six. These intervals a fraudulent defendant is frequently disposed to employ in protecting his property from the approaching

judgment and execution, by concealment, removal, or colourable assignment.

3. *If the power of arrest before judgment be taken away, it will be much more frequently impossible to obtain payment without suit; and the attempt to recover payment by suit, will be more frequently unsuccessful, and will be attended in general, with more delay and expence.*

While the writ is threatened or expected only, and may yet be averted by payment, the terror of it is in full operation upon the debtor's mind; and it is to that period, therefore, that we should principally look for its fruits. On the other hand, the expected service of a non-bailable writ excites comparatively little apprehension; it is a mere matter of costs, the amount of which are in the first instance inconsiderable, and which do not increase till a subsequent stage of the cause. There is but slight inducement to pay till that stage arrives; and at some seasons of the year, it does not arrive for several months.

It seems sufficiently clear, then, that the abolition of arrest before judgment would, with respect to all descriptions of debtors, very much increase the difficulty of obtaining payment; but with respect to one very numerous class of them, it is not too much to say, that there would in general be scarcely a chance of enforcing payment by action. Let the effect of the law of bankruptcy and insolvency be carefully kept in view, and it will then be easy to conceive the probable state of mind, and course of conduct of those fraudulent and embarrassed debtors, upon whom arrest now operates with so much advantage. Such of them as may contemplate bankruptcy before the period shall arrive when the plaintiff can obtain execution, will have nothing whatever to apprehend from the result of the action, and will naturally allow it to take its course. Those to whom the bankrupt law is not available, will have at least the expedient of a petition to the Insolvent Court; and looking to the chance of the plaintiff's defeat by some of the accidents of litigation, and to their own relief by the Insolvent Act, if it should eventually become necessary, they will contemplate the progress of the action with indifference. With respect to all such persons, therefore, it is reasonable to conclude, that the abolition of arrest before judgment, would leave them without any material inducement to yield to legal proceedings.

4. *If the power of arrest before judgment be taken away, it will, (like the abolition of arrest in execution), encourage the rash and fraudulent contracting of debt, and the dissipation of the property out of which the creditor should be paid.*

The power of preliminary, and that of final arrest, each impose at present a material restraint upon fraud and extravagance, and the abandonment of either one or the other, must therefore tend in its measure to increase those evils. In a comparative view, there is even reason to think, that arrest before judgment is the more formidable to the debtor, as being nearer in

prospect; and that its value as a preventive is consequently greater.

Such are the reasons which seem to make it unsafe to withdraw from the creditor his present discretionary power of arrest before judgment. That for these reasons, or some of them, it ought not to be withdrawn, is at any rate the opinion, so far as it can be collected from the evidence of the majority of those, whose occupations in life afford the best opportunity of forming a correct judgment. It is remarkable, indeed, that the public voice declares still more strongly in favor of preliminary arrest, than of arrest in execution. Of the whole number of persons whom the Commissioners have examined on the former subject, and whose views upon the practical question are distinctly indicated, not less than 259 are manifestly adverse to the abandonment of the present right of arrest before judgment, and only 66 are of the opposite sentiment.

By a table annexed to the report of the commissioners, it is shewn, that the number of actions commenced by bailable process in the superior Courts of Common Law, (including the Palatine Courts), in the year beginning 12th of February, 1830, and ending 12th of February, 1831, was not less than 26,650.

It seems strange, when this circumstance is considered, to find it maintained by some persons, that the bailable writ ought to be abandoned, because it is less efficacious than serviceable process; or that its superior expensiveness is a sufficient reason for laying it aside. Independently of the mass of opinion which is opposed to them on these points, they are sufficiently refuted by the fact, that arrest is so frequently in use. It may be assumed, that suitors will take the more correct view of their own interests; and when the admitted expensiveness and trouble of the proceeding, with its attendant affidavit, is taken into account, its adoption in so many thousand actions commenced in the course of a single year, must be supposed to result from an opinion that it improves, in a dangerous case, the chance of obtaining payment from the defendant. The instances of vindictive or oppressive arrest, are much too rare to form a material exception; nor is the chance of *slaying the sheriff* (as it is called), that is, of making him personally liable for the debt, where the bail are not perfected nor the defendant rendered to prison in due time, an object that can reasonably be supposed to determine in any great number of cases the choice of process. Much has been said on this subject, but as it is apprehended, with little foundation in fact. It appears by a table annexed to the report, that this sort of advantage is, on the whole, rarely obtained. In the King's Bench, not more than 60 attachments issue against the sheriff in the course of the year.

It is urged, that the practice of arrest before judgment, in subjecting the defendant to seizure of his person before the debt is judicially ascertained, opposes itself to the principles of natural justice, and gives great facility to oppression.



In England, while seizure of the person is justly preferred, it is guarded by nearly all the cautions which the nature of the case permits. The mitigations of bail and deposit are allowed to the defendant, and the plaintiff is liable to severe punishment of various kinds in case of abuse. Resort cannot be had to a bailable writ without first making a distinct and absolute affidavit of the debt. If it should turn out not to be due, or not due to the extent sworn, the plaintiff is exposed to a heavy penalty in the shape of costs; if he should have proceeded without probable cause, he is additionally subject to an action for damages; if the oath is knowingly false, he, (or the party who made it,) incurs the tremendous consequences of perjury. If all this protection is considered as insufficient, let it be recollected that in a thousand cases where property and liberty, where life and reputation are at stake, the guards are neither stronger nor more numerous; and yet there is little sense of insecurity.

After all, "experience is the wisest guide in this matter." In point of fact, abuses of the power are extremely rare. It is a misfortune which attends the whole subject, that the picture of arrest for debt has been (with few exceptions,) drawn by the sufferers only. If we were to attend exclusively to the representation from prisoners, we should be startled by the mass of oppression which they seem to expose. But the statement of their detaining creditors would no doubt give the matter a very different aspect. It is not necessary, however, to hear the other side. It is enough to attend to a third party. Let the answers of the bankers, tradesmen, and attorneys be consulted; and an immense majority (consisting of some advocates for abolition as well as its opponents,) will be found to declare that they scarcely have known an instance of abuse or oppression; that such cases are to their belief extremely unusual, and that the general spirit of the creditor is strikingly indulgent. After perusal of these answers, it is impossible not to coincide in the justice of a remark made by one of the mercantile firms to whom the questions were addressed. "We think the legislature has of late years been too much inclined to view tradesmen in general as cruel oppressors, and debtors as amiable unfortunates, when in most cases directly the reverse is the fact."

The ordinary history of courts of justice affords strong concurrent presumption as to the rarity of abuse. It is familiar to all who practise there, that considering the many thousand bailable writs which issue in the course of the year, the complaints of malicious arrest are upon the whole surprisingly unfrequent. And it is equally notorious that the plaintiff, whether he proceeds by serviceable or by bailable process, is in an immense majority of instances ultimately found to be entitled to recover the debt he claims. A table in the appendix to the first Common Law Report, proves that upon the average, out of 56,221 actions yearly commenced in the King's Bench at Westminster, only about 3,500 are brought to trial or argued on demurrer. With respect to the remainder,

(after making allowance for a small but no ascertained number discontinued by the plaintiff himself,) the fair general inference is, that the defendant is obliged to resort to some means of payment, compromise, or discharge, and the action is consequently well-founded; and to these must of course be added, the very large proportion of cases, (of which no account can be obtained) in which the trial or demurrer is followed by judgment for the plaintiff.

## NEW BILLS IN PARLIAMENT.

### OATHS ABOLITION.

This is intituled "An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof."

The preamble recites, that by 1 & 2 W. 4, c. 4, and by other enactments, the number of oaths and affirmations required to be taken in the Customs and Excise had been greatly diminished, and the beneficial operation thereof gave ground to believe, that the number of oaths and affirmations might with advantage be further reduced in those and in other departments of the state.

The substance of the proposed enactments is as follows:

1. Lords of the Treasury empowered to substitute declaration for oath, &c., in certain cases.
2. Notice of substitution of declaration to be published in Gazette.
3. Persons knowingly making false declarations liable as for perjury.
4. In cases of false declarations in matters relating to the Customs and Excise, additional penalty of 100*l*.
5. Oath of allegiance still to be required in all cases.

The following clause excepts judicial proceedings:

6. That nothing in this act contained, shall extend or apply to an oath, solemn affirmation, or affidavit, which now is, or hereafter may be made or taken, or be required to be made or taken in any judicial proceeding in any Court of Justice; or in any proceeding for, or by way of summary conviction before any Justice or Justices of the Peace; but all such oaths, affirmations, and affidavits, shall be continued to be required, and to be administered, taken, and made, as well, and in the same manner as if this act had not been passed.

The remainder of the clauses are as follows:

7. Universities of Oxford and Cambridge,

and all other bodies, may substitute declaration in lieu of an oath.

8. Churchwarden's and sidesman's oath abolished, and a declaration made in lieu of an oath.

9. Declaration substituted for oaths by persons acting in turnpike trusts.

10. Fees on oaths payable on declarations, substituted in lieu thereof.

11. Persons administering the oaths contrary to the act, guilty of a misdemeanor.

12. Recovery of penalties.

13. Act to take effect after 1st of June, 1835.

14. Act may be amended during the present session.

#### CHESTER CRIMINALS' EXECUTION BILL.

[As amended by the Committee.]

That from and after the passing of this act, the *sheriffs of the county of the city of Chester* for the time being, shall execute the sentence of death upon all criminals condemned to die, for offences committed within the county of Chester; and the Judges, or any one of them, named in the commission of oyer and terminer and gaol delivery, issued, or from time to time to be issued for the county of Chester, shall have full power and authority to make such orders on the constable of the castle of Chester, for delivering such criminals to the sheriffs of the county of the city of Chester; and on the said sheriffs for the execution of such criminals by the said sheriffs, as such judges or judge shall think fit; all which orders the said constable and sheriffs shall be, and they are hereby required to obey, according to the exigency thereof.

That if at any time it shall seem fit to any judge, before whom any criminal shall be convicted, and sentenced to die for any offence committed within the county of Chester, that such criminal should be executed at any place not within the jurisdiction of the sheriffs of the city of Chester, but within the county of Chester; it shall be lawful for such judge to make any order which he may think fit, upon the sheriff of the county of Chester, to execute such criminal at such place; and also upon the constable of the castle of Chester, to deliver such criminal to the sheriff of the county, and do and perform, and suffer to be done and performed, all such matters and things as may be necessary for carrying into effect, and executing such sentence; and the said sheriff and constable shall be liable, and are hereby required to obey all such orders.

#### LAW OF EXECUTORS AND ADMINISTRATORS.

In the last session of Parliament, the bill as first brought in by Sir J. Campbell, combined the proposed alterations in the law of Wills, as well as the law of Executors and Administra-

tors. These two objects are now sought to be obtained by separate bills. For the present, we beg to direct the attention of our professional brethren, to the bills for amending the law of Executors and Administrators.

The proposed enactments are as follows.

#### Interpretation Clause.

1. That the words and expressions herein after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act, shall exclude such construction, be interpreted as follows; (that is to say,) the word "will," shall extend to a testament and to a codicil; and the words "personal estate," shall extend to leasehold estates, monies, choses in action, goods, chattels, rights, credits, and all other personal property whatsoever, and any share or interest therein; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female as well as a male.

#### Passing legal title to Legatee.

2. That the assent of an executor or administrator, shall not vest in a legatee the legal title to any personal estate, other than such chattels as may pass by delivery; but that such title shall remain vested in the executor or administrator, until he shall have executed an assignment or release in writing, of such personal estate.

#### Setting Assignments aside.

3. That every Court of Equity shall have jurisdiction to make void any assignment or release of personal estate, which may have been executed by an executor or administrator, to or for the benefit of the legatee thereof, or to decree a re-assignment to be made to any person of such personal estate; and also to decree a restoration or delivery to be made to any person, of any chattel which may have been delivered to or for the benefit of a legatee: Provided, that the jurisdiction hereby given shall not extend to prejudice or affect the right of any *bond fide* purchaser for valuable consideration.

#### Executor's Representative.

4. That notwithstanding an executor or survivor of two or more executors, may have died without obtaining probate of the will of the testator, the survivor of such executor, or of such surviving executor, shall be the personal representative of such testator, in preference to any person to whom letters of administration may be granted, and shall be entitled to prove the will of such testator.

#### Renouncing Executorship.

5. That any executor of an executor, whether he shall or not have proved the will of the testator, by whom he shall have been appointed executor, may at any time before he shall have

intermeddled with the assets of, or otherwise acted as the personal representative of any person of whom such testator was the executor, renounce the executorship of the will of such person, in like manner as he might have renounced the probate of the will of the testator by whom he shall be appointed executor, before he had proved the same, or acted as his executor; and after such renunciation, any person to whom letters of administration of the personal estate of such person may be granted, shall be his legal personal representative, as if there had been no such executor.

#### *Voidable Administrations.*

6. That where, in consequence of the will not having been discovered, or from any other cause, letters of administration shall have been granted of the personal estate of any testator, at a time when there may be an executor of his will; such letters of administration shall be voidable only, notwithstanding such executor may not have renounced probate of will of such testator, or may have acted in the execution thereof, or may afterwards prove the same; and such letters of administration shall not become void until the same shall be revoked, or until probate of the will of such testator shall be granted to the executor.

7. That every act or deed done or executed by an executor or administrator, under or by virtue of letters of administration, which shall be voidable, shall be valid, notwithstanding such letters of administration shall afterwards be revoked, or become voidable: Provided, that every person to whom as next of kin, or otherwise, any personal estate of the testator, or money produced therefrom, shall be delivered, assigned, or released by such administrator, or who shall become entitled to any such personal estate or money, by, from, or under such administrator, other than a *bond fide* purchaser for valuable consideration, shall be liable in equity to account for and deliver, assign or transfer the same to the legatee or other person entitled thereto, under the will of such testator.

8. That every deed or other assurance executed by an executor by virtue of his office, after voidable letters of administration of the personal estate of his testator shall have been granted, and before the same shall have been revoked, or probate of the will shall have been granted to such executor, shall be void.

9. That every deed or other assurance executed by an executor, by virtue of his office, shall be void in case he shall die without having proved the will by which he shall be appointed executor.

#### *Discharge of Executor, &c.*

10. That where any person shall be desirous of being discharged from his office of executor or administrator, it shall be lawful for any Court of Equity, by a decree to be made in a suit instituted for that purpose, to discharge such person from such office, in like manner as any person may be discharged by such Court from the office of a trustee; and after such decree, such person shall cease to be such executor or

administrator; and it shall be lawful for the Court who would be entitled to grant probate of the will or letters of administration of the personal estate of the testator or intestate of whose will or personal estate the person so discharged shall have been executor or administrator, to grant letters of administration of the personal estate of such testator or intestate, as if the executor so discharged had died intestate, or the administrator so discharged had died.

11. That this act shall not extend to the will, or letters of administration, or the personal estate, or the executors or administrators of any person who shall die before the 1st Jan. 1836.

### SELECTIONS FROM CORRESPONDENCE.

No. XCIV.

#### CONSTRUCTION OF CHIMNEY SWEEPERS' ACT.

*To the Editor of the Legal Observer.*

Sir,

AN impression is abroad that the poor sweeps are, by Mr. Tooke's act, prohibited from calling "sweep," and the little fellows consequently are sometimes for half an hour together endeavouring to rouse the servants by ringing the kitchen bell, while the shrill cry "sweep" would do the business in a second. The absurdity of any enactment on such a subject has induced me to look at the act; and to my surprise I find that there is nothing of the kind in it. The act prohibits any master, journeyman, or apprentice from *calling* or *hawking* the streets; but it surely can never be contended that a sweep's calling "sweep," or any thing else, for the purpose of letting the folks know of his arrival according to orders, can be considered calling or hawking the streets.

J. C.

#### PARTIES TO ACTIONS.

Sir,—In the extremely useful paper in the *Legal Observer*, of the 28th February, on the parties to actions, the writer has forgotten to notice the late act of parliament, enabling executors to sue and be sued for wrongs done to or by their testator. I am aware that it was not the intention of the writer of that article to enumerate every instance in which the rights of parties to sue might admit of a slight doubt, but merely to lay down general rules, by the aid of which the diligent practitioner might be enabled to form a correct opinion. But it appears to me, that the act of parliament to which I allude (3 & 4 W. 4. c. 42, s. 2.) requires particular mention, inasmuch as it materially alters the old rule of *actio personalis moritur cum persona*.

Having said thus much on what I consider an omission in that article, I beg to propose the addition of the following, or some such matter, as an addenda to that article.

With respect to actions for wrongs independently of contract, the rule was, that *actio personalis moritur cum persona*; and consequently executors, could not in general bring an action for a *wrong* done to their testator. But this was partially remedied by stat. 4 Edw. 3. c. 7, by which executors may have an action of *trespass* for a wrong done to their testator. But this has been farther extended by the 3 & 4 W. 4. c. 42, s. 2, by which an action of trespass, or trespass on the *case*, may be maintained by executors for any injury to their testator's estate, so as such injury shall have been committed within six calendar months before their testator's decease, and provided such action shall be brought within one year after such decease; and such action may be maintained against executors, &c. for any wrong done by the testator to another's *real or personal property*, so as such injury shall have been committed within six calendar months before such person's death, and provided such action shall be brought within six calendar months after executors taking such executorship. The damages recovered to be payable in like manner as simple contract debts.

Perhaps your intelligent correspondent might consider that the above was irrelevant to the subject he was writing on, viz. "the parties to actions;" but I think he will, on reflection, coincide in my opinion, that it ought to have formed a portion of his subject, inasmuch as it confers a right of action on parties who before that act had no such right, and who consequently must be parties to such an action.

H. G. S.

[We insert this letter as not without its use, although we consider the suggestion it contains does not strictly apply to the subject treated of by our learned contributor.—Ed.]

#### ATTORNEYS TAKING SPECIAL BAIL.

In the new edition of Archbold's Practice, by Chitty, under the head of "Bail put in in the Country," it is stated, that "it is enacted by statute 4. Wm. and M. c. 4, s. 1. that the Chief Justice, &c. shall grant commissions to such persons as they shall think fit (nor being common attorneys and solicitors) in the several counties of England and Wales," &c. Is it meant that attorneys cannot be commissioners for taking special bail, as is very often the case?

W. T.

#### EXCHANGE OF LANDS IN COMMON FIELDS.

Sir,

As M. seems to have abandoned that which appears to me to be the true construction of the first section of this statute, together with his parenthesis; give me leave to suggest the insertion of a comma, without resorting to a bracket; let us read the section thus: "in lieu of and in exchange for any other land lying in the same or any other common field, or for any inclosed land, within the same or any adjoining parish." The word "land," in the latter part of the section, must, of course, mean land *ejusdem generis*.

J. C.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### MANORIAL RIGHTS.—ACQUIESCENCE.

*Circumstances in which long acquiescence of the lord of a manor in encroachments upon his manorial rights by the tenants of the manor without complaint, was held to be a bar to a suit.*

The bill was filed by the lord of the manor of Oldbury, in the county of Salop, against the copyhold tenants of the manor; and it prayed that they, their lessees, assignees, and vendees, might be restrained from digging for coal and iron-stone within the manor, and that they might be decreed to account for the profits derived from the working of the said mines for the last twenty years.

The defendants, by their answers, insisted that they had a right by the custom of the manor to dig for these mines in their respective copyhold lands; that they had done so for more than thirty years, not only without hindrance, but with the knowledge and acquiescence of the lord and steward of the manor, and that they had expended a large sum in working and improving the mines.

This defence was supported by evidence of the long exercise by them of the right claimed, by digging for minerals, cutting timber, conveying away clay for bricks, and by otherwise dealing with the subsoil of the respective copyhold lands for near thirty years, without any complaint on the part of the lords of the manor. The evidence shewed farther, that the tenants carried away coal dug in their lands, by a canal in the immediate view of the manor house, with the cognizance of the steward; and that the wills of the deceased tenants, the surrenders and admissions of the new, entered on the rolls of the Manor Court, often contained reservations or bequests of the mines of coal and iron.

The Master of the Rolls, on the hearing of the cause, ordered the suit to be stayed for a year, giving the lord liberty in that time to try his right by an action of trover or issue against the defendants and their vendees or assignees. No action was brought by the plaintiff, and the defendants now appealed from his Honor's order, and prayed that the bill be dismissed.

Sir Edward Sugden, Mr. Jacob, and Mr. G. Richards, for the defendants, insisted, that in the circumstances of the case as proved in evidence, the plaintiff had no equity; and that his acquiescence for more than twenty years, without remonstrance or claim of right, joined to the facts of his steward accepting surrenders from the tenants, with express reservation of the minerals, were a complete bar to his claim in this Court. *Hicks v. Cooke*.<sup>a</sup> *Dillon v. Parker*.<sup>b</sup>

<sup>a</sup> 4 Dow Parl. C. 16.

<sup>b</sup> 1 Clark & Fennell, P. C. 304—18.

Sir *William Horne*, Mr. *Knight*, and Mr. *Whitmarsh*, supported the order of the Court below.—Contended that the lapse of time worked no bar in the case, and that the plaintiff was proceeding at law.

The Lord Chancellor (Brougham) having taken into consideration the circumstances and proofs in the case, thought it was not consistent with the principles of a Court of Equity to permit a party, after such long acquiescence, to demand the profits of property upon which he allowed others for so many years to expend their money and labour, without incurring the least risk himself. The lord having neglected to bring the action for which the order of the *Master of the Rolls* gave him liberty, the bill ought not to be any longer allowed to hang over the defendants, but must be dismissed, with costs of the suit. The language of Lord *Redesdale*, in *Hicks v. Cooke*, and of Lord *Lyndhurst*, in *Dillon v. Parker*, were applicable to this case.

*Parrott v. Palmer*, at Westminster, M. T. 1834.

#### PAWNBROKERS' ACTS.—ILLEGAL CONTRACT.

*A contract of partnership, in violation of the law relating to pawnbrokers, is void, although nothing appear on the face of the contract to contravene the law; but from the way in which the business was carried on, it must be inferred that there was a subsidiary contract, either verbal or written, affecting the primary contract, and evading the law.*

This was an appeal from a decree of the *Master of the Rolls*.<sup>a</sup> One of the parties is the widow and administratrix of one *Armstrong*, who carried on the business of a pawnbroker in Baldwin's Gardens, London; the other is the representative of one *Warner*, who claimed to have been a partner in that business, and to have a lien on the estate of *Armstrong* to the extent of 7000*l*. He entered into the partnership with *Armstrong* in 1810, when he advanced the sum of 2000*l*., on the condition, as expressed in the articles of agreement, that *Armstrong* was to have the sole management of the business, and that *Warner* was to receive—whatever might be the loss or profits of the trading—a yearly interest of 10*l*. per cent. on his capital. The business proved lucrative, and further advances were made by *Warner*, until, at the death of *Armstrong*, the whole of his share in the property, principal and interest, amounted to 7000*l*. *Warner* then demanded a settlement of accounts, and payment of interest; but Mrs. *Armstrong*, the widow and administratrix, resisted his claim of interest or capital, because, as she alleged, the partnership, as it had been carried on, was contrary to the provisions of the acts for the regulation of the trade of pawnbroking,<sup>b</sup> by which it is provided that all persons carrying

on that trade must have their names inserted in the license, and painted over the door, &c. In the present case, notwithstanding the deed of partnership is not disputed, the name of *Warner*, the plaintiff, was not in the license—in the lease of the house—in the policy of insurance—in the books of the partnership—over the door—or in any part of the transactions.

On the matter coming before the *Master of the Rolls*, he directed an issue, to try whether there had been such dealings under this partnership as would vitiate a contract in itself legal, but, as it was alleged, illegally executed. The Jury, under the direction of Lord *Lyndhurst*, before whom the issue was tried in the Court of Exchequer, found for the plaintiff, that nothing had been proved before them to shew that the contract was either illegal, or illegally executed; the learned Judge at the same time ruling, that there was nothing to prohibit a partnership of this description in the trade of pawnbroking. The law and the facts were again brought before the Judges in Error, upon a bill of exceptions; but although they held that the learned Judge had been mistaken with regard to the law, they affirmed the finding of the Jury.<sup>c</sup> Notwithstanding these two decisions, the *Master of the Rolls*, upon the hearing on further directions, dismissed the plaintiff's bill, with costs. It was from that decree the appeal was.

Mr. *Knight* and Mr. *Wakefield*, in support of the appeal. As pawnbrokers' interest was by law 12½ per cent., the contract for 10 was perfectly legal. The whole of the circumstances, as proved on the trial, would not substantiate any implied illegal contract in addition to the legal one; and as the jury had so found, it was contrary to all precedent for a Judge in Equity, after having directed an issue, to pronounce a decree directly opposite to the sense of the verdict of the Jury.

Sir *E. Sugden*, Mr. *Cooper*, and Mr. *Lowell* supported the decree.

The Lord Chancellor<sup>d</sup> said, he should take a day or two to consider the matter; but he thought it right to say then, that substantially and in effect the *Master of the Rolls* had not run counter to the opinion of the Judges in Error. It was one thing to say that a contract, in itself perfectly legal, had not, as was proved before them, been illegally executed; and another to declare that the same contract, though perfectly valid when entered into, had not, by some understanding between the parties, been so executed as to render it invalid and abortive. It was his duty to see that there had been no such secondary contract or understanding between the parties; and for this purpose he should look into the evidence, and also examine precedents touching the assertion of the counsel for the plaintiff, that no Equity Judge had ever decided contrary to the finding of a jury, or abstained from sending the matter

<sup>a</sup> See 7 L. O. p. 540.

<sup>b</sup> 25 G. 3. c. 48; 36 G. 3, c. 87; and 39 & 40 G. 3, c. 99.

<sup>c</sup> See *Armstrong v. Lewis and others*, 2 Crompt. and Mee. 274.

<sup>d</sup> Lord Brougham.

to a new trial, if the finding in the first was unsatisfactory. The Legislature, on the soundest principles of public policy, had provided that all the partners in pawnbroking should be known; and it was essential that the law should not be evaded.

His Lordship, on the day he gave up the great seal, said, that "looking at all the facts of this case, both in respect of the conduct of the parties and the nature of their transactions, and applying to them the test and rules of common sense, abandoning all legal subtleties, which are discreditable to the law as well as to justice, I am clearly of opinion, that the objection made here must be held to prevail. It was of the greatest importance to the public, that the acts applying to pawnbrokers should be strictly enforced.

Decree affirmed.—*Armstrong v. Armstrong*, and *Warner v. Armstrong*, at Westminster, Nov. 15 and 21, 1834.

### Rolls Court.

#### INJUNCTION.—PARTNERSHIP.

*Circumstances in which the Court will, upon motion, grant an injunction to prevent a continuing breach of contract between partners, although the injunction amounts to the whole of the relief prayed for by the bill, and it does not pray for a dissolution of the partnership.*

This was a bill filed by one partner of a commercial firm against another, and a motion was made on behalf of the plaintiff, for an injunction to restrain the defendant from keeping in his exclusive possession, a certain book belonging to the partnership business. The motion was supported by arguments founded upon a covenant in the articles of partnership, under which it was provided, that all the partnership books should be kept in the counting-house, open at all times to the inspection and examination of the partners. The defendant took away one of these books, and kept them in his exclusive possession; and hence was inferred a violation of the articles of partnership, and an intention to take advantage of the plaintiff in respect of the customers of the firm, whose names were recorded in the book in question, as the partnership was soon to be dissolved.

The further facts and arguments in the case, may be inferred from the following judgment:

The Master of the Rolls, having noticed those facts, said, three objections have been made to the granting of the injunction sought for; first, that the injunction embraces the whole relief sought by the bill; secondly, that as the bill does not pray a dissolution of the partnership, the Court has no jurisdiction to interfere; and thirdly, that the injunction sought to be obtained, is open to the objection, that the Court would thereby enable the parties indirectly, to do that which it has no jurisdiction to enable them to do directly. The first objection has no weight, because, although the Court cannot grant a perpetual injunction upon motion, it is

in the constant habit of granting interlocutory injunctions, until the whole merits of the case are ascertained upon the hearing. As to the second objection, a rule has, indeed, been laid down, that a suit between partners cannot be entertained unless a dissolution is prayed for; but that has been said to apply only to cases in which an account is prayed for, which is not the case here. It is obvious, that such a rule might be easily evaded by praying in all cases for a dissolution, whether there was any intention or not, to take steps for giving effect to the prayer. But there is no reason upon any of the principles recognized by this Court, why the same protection which the Court gives to all other persons, should not be given to partners in commercial concerns, who are more likely than other persons to require that protection. If this Court interferes to restrain breaches of covenant between other persons, why should it deny that benefit to partners? The third objection was the only one which raised any doubt in my mind, because it is one which has weighed strongly with Judges, for whose opinions I entertain a great respect, and I should be unwilling to grant an injunction, the effect of which would be to give the Court jurisdiction to do that indirectly, which it cannot do directly. But there is a distinction between cases in which the defendant has done all that he intended to do, and the Court seeks to undo that which has been previously done; and cases where the injury complained of is a continuing breach of duty or contract, which the defendant is committing from day to day. The present is a case of the latter description, inasmuch as the defendant by keeping the book in his possession, and withholding it from the plaintiff, is guilty of a continuing violation of the articles of partnership, which gives the Court jurisdiction to interfere by injunction. I am of opinion, therefore, that the plaintiff is entitled to an injunction to restrain the defendant from a further violation of his covenant; and it will be proper in drawing up this injunction, to follow as closely as possible, the language of the covenant.

*Taylor v. Davis*, at Westminster, M. T. 1834.

### Common Pleas.

#### QUARE IMPEDIT.—TIME FOR DECLARING.—NON PROS.

*The year within which a plaintiff must declare is to be reckoned, both in personal and real actions, from the return day, and not from the date of the defendant's appearance.*

This was an application to set aside a declaration in *quare impedit*, on the ground of more than a year having expired since the return day of the writ. A rule *nisi* having been obtained—

Cause was shewn against it. It was contended, that the rule of Hilary term which required a plaintiff to declare within a year after the return of the process, did not apply to such cases as the present.

The Court, after taking time to consider, was of opinion that the rule referred to did not apply to the present case; but that according to the rule of the common law, which applied to all forms of action, the plaintiff ought to have declared within a year, and that year was to be reckoned from the time of the return of the writ, and not from the day of the defendant's appearance.

Rule absolute.—*Burnes v. Jackson and others*, H. T. 1835. C. P.

### Exchequer of Pleas.

#### BAIL.—BAIL-BOND.—SETTING ASIDE PROCEEDINGS ON PAYMENT OF COSTS.

*A bail-bond is regular, although no actual arrest may have been effected, if the defendant by his own act has waived the necessity for it.*

*An affidavit to set aside proceedings on a bail-bond must state the application to be made for the bail's indemnity "only."*

*The bail-bond cannot be allowed to stand as a security unless the plaintiff has declared de bene esse.*

In this case an application was made to set aside proceedings on a bail-bond, on the ground of irregularity. The alleged irregularity was, that the defendant had never been actually arrested, although the fact of an arrest was recited in the bail-bond. Instead of being arrested a letter was sent to the defendant stating the fact of a warrant being in the hands of the officer, and the defendant subsequently gave a bail-bond. It was contended, that as no actual arrest had been effected the bail-bond was irregular.

The Court was of opinion that the act of the defendant was a waiver of the actual arrest, and that he could not now apply on that ground to set aside the proceedings. If there were any circumstances of supposed impropriety in obtaining the bail-bond, they should have been explained in the affidavit supporting the application.

An application was then made on the part of the bail to set aside the proceedings on the bail-bond on payment of costs, bail above having been perfected. A rule *nisi* having been obtained—

Cause was shewn against it. It was submitted, that the application could not succeed, on the ground of a defect in the affidavit in support of it. That affidavit stated that the application was made by the bail for their "own" indemnity. Whereas it ought to have been, "only" indemnity.

In support of the rule, it was contended, that although such should be the form according to the practice of the Court of King's Bench, it was different in the Exchequer. The word "own" in the latter Court was sufficient.

The Court thought the affidavit was insufficient, as the practice of the Court of King's Bench with respect to such affidavits had been adopted in the Exchequer.

The application was then renewed, on a regular affidavit. It appeared that bail had not been put in in due time, nor had the plaintiff declared *de bene esse*. Various negotiations it appeared, however, had been carried on at the instance of the defendant, by which such delay had been caused to the plaintiff that the period had gone by during which he might have tried his cause, if bail had been perfected in due time.

On shewing cause against the rule thus obtained, it was contended, that although the plaintiff had not declared *de bene esse*, and therefore in point of form he could not be said to have lost a trial, yet in point of reality he certainly had, in consequence of the defendant's delay. The plaintiff therefore was entitled to have the bail-bond to stand as his security.

The Court was of opinion that as it had been so frequently decided that a trial had not been lost by a plaintiff unless he had declared *de bene esse*, the plaintiff was not entitled to have the bail-bond stand as a security. The present rule must therefore be made absolute, on payment of costs, without the bail-bond standing as a security.

Rule absolute accordingly.—*Call v. Thelwell*, H. T. 1835. Excheq.

### NOTES OF THE WEEK.

#### HOUSE OF LORDS.

##### *Bills for second Reading.*

<i>Title of the Bill.</i>	<i>Proposer.</i>
Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Oaths Abolition.	Duke of Richmond.
Contempts in Equity (Ireland).	The Ld. Chancellor.
Infants' Property (Ireland).	The Ld. Chancellor.

##### *In Committee.*

Chester Criminals Execution.

#### HOUSE OF COMMONS.

##### *Bills to be brought in.*

Amending the Law of Tenure.	Sir J. Campbell.
Amending the Law of Escheat.	Sir J. Campbell.
Improving the administration of Justice in Ecclesiastical causes.	Attorney General.
Abolishing the Jurisdiction of Ecclesiastical courts in Tithes.	Mr. C. Buller.
To give Prisoners full Defence by Counsel and Attorney.	Mr. Ewart.

To amend the Law of Libel.	Mr. O'Connell.
To amend the Poor Law Act.	Mr. Trevor.
Bankruptcy Funds.	Mr. Rolfe.
Registration of Births, &c.	Mr. Wilks.
Highways.	Mr. Lefevre.
Registration of Voters.	Lord J. Russell.

*Second Reading.*

Abolishing Imprisonment for Debt, &c.	Sir J. Campbell.
Copyholds Enfranchisement.	Sir J. Campbell. March 18.
Illegal Securities.	Mr. Rolfe. 18 Mar.

*In Committee.*

Execution of Wills.	Sir J. Campbell.
Law of Executors, &c.	Sir J. Campbell.

*Passed.*

Chester Criminals Execution.	Mr. Jervis.
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**ABOLISHING IMPRISONMENT FOR DEBT.**

The printed copies of this Bill had not been delivered at the time we went to press; but we understand the details of the measure are nearly the same as last year. We think that the *public* is mainly concerned in the question of abolishing arrest altogether. Some part of the *profession* will no doubt be affected by the change; but if all the provisions contained in the Bill by which property of every kind belonging to the debtor is to be made available, we incline to think the profession at large will rather gain than lose. We refer however to another part of this number, for the statement of the dangerous consequence to the interests of creditors of a total abolition of arrest.

In the last Bill, which was brought in after the Local Courts Plan had been repeatedly rejected, a kind of minor scheme of Local Courts was proposed, consisting of *Commissioners* (in lieu of "Judges in Ordinary" as formerly contemplated), who with registrars, official assignees, ushers, and messengers, were to form Courts of Record for carrying the Act into effect, and in which attorneys as well as barristers were to be allowed to practise as advocates. Appeals were provided for, first to the Court of Review, next to the Lord Chancellor, and finally to the House of Lords. Now we conceive, that until the Report of the Com-

missioners on Municipal Corporations shall be brought in, and the proper measures considered for carrying their recommendations into effect, this new plan of Local Courts of Commissioners of Petitioning Debtors should be deferred, because it is probable the two plans (if proper to be carried) may be united, and one half the expence of each thereby saved. We trust, therefore, that after the Imprisonment for Debt Bill has been printed it will be suspended until the whole scheme of this department of law reform can be submitted to parliament.

**ANSWERS TO QUERIES.****Property and Contingencies.**

DEVISE. P. 304.

1. An estate tail is at once vested in *S. R.* (which of course she can bar at pleasure), remainder to her and her heirs, this remainder being charged with the payment of certain sums (for these are a charge, and no condition). If *S. R.* has died without barring her estate tail, what should hinder her heir-at-law from being the remainder-man, or, in default of issue of the body of *R. S.*, from being absolute owner? The answer seems to me obvious enough. I have presumed that your correspondent has used the word *heir-at-law* in a strict legal sense, and therefore that *S. R.* is deceased; for if he means the heir apparent or presumptive living, *S. R.* of course, as *nemo est hæres viventis*, such person during her life takes no estate at all. A more interesting query than the one put by G. R. F. will arise from considering the very case he has given. Though perhaps not strictly regular to tack a query as an appendix to an answer, I will state it. If *S. R.*, during her life-time, has barred her estate tail, and conveyed the property in fee, will the charges of 50*l.* attach on the premises in the hands of the *purchaser*, on default of issue of the body of *R. S.*? or do the words of the devise merely charge the premises in event of their coming to the *heir-at-law* in default of such issue? for the testator seems never to have conceived a possibility of the estate going out of the hands of *S. R.* before her decease, but to have thought it firmly bound up at least for her life. In fact, it is a common notion among the laity, that estates tail cannot in any way be conveyed.

J. O.

2. If G. R. F. will refer to Fearn on Contingent Remainders, p. 7, he will find this very case put as an instance of a contingent remainder of the first class; the two cases vary only in this: that in the one put by Fearn, the remainder is limited over to a stranger; while in this, it is limited to the tenant in tail herself; the consequence of which is, that the remainder



being here limited to a party who takes a previous estate of freehold, the word "heirs" must be considered as a word of limitation, and not of purchase, the latter of which it is in the case put by Fearn. See *Goodright v. Wright*, 1 P. Wms. 397. Of course *S. R.* will take the remainder in fee, subject to the charges of 50l. each to *I. S.* and *F. S.*

(1)

DEVISE, CONTINGENT OR EXECUTORY.  
PP. 80, 233, 239, 266, 335.

I am called upon to answer what I think of the case of *Roe v. Briggs*, 16 East, 406, which your correspondent (p. 335) declares is completely in opposition to the doctrine I have before laid down, p. 266. I had read the judgment of Lord *Ellenborough*, and I have now read it again, aided by the parallel now given by your correspondent; but I must own that I am not inclined to change my former opinion. The words there used were, "heirs of the body;" and therefore it does not want much argument to show that a person cannot answer that description during the life-time of the ancestor. The words in the case in dispute were "eldest child." When Lord *Ellenborough* was speaking of children, he could only mean children taking as heirs of the body, and as such heirs they could not claim in their ancestor's life-time. If Lord *Ellenborough* meant to say that the words there used were tantamount to *children*, then is the case decisive of the present point; but such was not the decision, for wherever he speaks of children, he merely speaks of them as being the only parties who could answer the words "heirs of the body;" but because there were children, he did not mean to say they could answer the description in the lifetime of the ancestor. To shew, that if the word "children" had been used in the place of "heirs of the body," Lord *Ellenborough* would have decided otherwise, I shall again refer to the case of *Doe v. Newell*, which was subsequently carried to the House of Lords, and is there reported, 5 Dow. 202; and in the King's Bench, 1 M. & S. 327. I have stated the case *supra*, 266; and it will be seen, that supposing Lord *Ellenborough* meant to say that the words "heirs of the body" were synonymous with "children," the only difference between the two cases would be, that in one the words were "then living," and in the other "at the age of twenty-one." Lord *Ellenborough* decided both these cases; and the latter, we have seen, was carried to the House of Lords and there confirmed; so that without we suppose Lord *Ellenborough*, in *Roe v. Briggs*, to mean that the estate remained contingent from the circumstance of no one being able to claim as heir of the body in the ancestor's lifetime, the two cases cannot stand together; and the latter being carried to the extreme Court of Appeal, must be the ruling authority. In both these cases the parties to take under the respective words, were not in being at the time of the limitation

made, or death of the testator making such limitation; so that in neither case could it be predicated for certain, that they ever would be in being, or that if they ever came into being, that they would be so at the death of the party at whose decease they were to take; and yet we see a different conclusion come to in each case. Viewing the cases in the light I have now put them, they may stand together, and will support my position:—that as soon as a child was born, it might take a vested interest, subject to divestment in case of death in its mother's lifetime, or previous to a forfeiture committed; but if alive at a forfeiture, it might then enter. T. O. B.

Common Law.

JURISDICTION OF MAGISTRATES.—WAGES.—  
P. 143.

I believe the general opinion of lawyers on the first part of this subject generally to be, that in whatever county the cause of complaint arises, there the magistrate has jurisdiction to summon the offender, wherever he may reside, and to hear and determine the complaint.—*Vide* the Commission.

With respect to the case of wages stated by J. A. M., I think, notwithstanding the seemingly limited power contained in the first part of stat. 20 G. 2. c. 19, yet taking into consideration all the bearings of that and of the subsequent statutes, more especially 4 G. 4. c. 34, ss. 4 & 5, with the apparent intention of the Legislature in passing the latter act, no doubt could exist in the mind of any justice as to his authority, not only to summon a master residing in another county, for wages due to a laborer employed by him in the county for which the magistrate summoning acts, but also to enforce payment by his warrant of distress (to be backed or indorsed by a magistrate of the county in which the master lives, the latter justice in such a case acting only ministerially).

E. T. S.

QUERIES.

Common Law.

MINOR.—WIFE'S DEST.

*H.* sells goods to *O.*, a widow, and she is afterwards married to *W.*, who has not yet attained the age of 21. Can *H.* sue *W.* and wife now, or must he wait until *W.* attains his majority?—Is there any case in the books on this point?

D. a. L.

Law of Elections.

VOTER.—PAYMENT OF TAXES.

A case of "*Cullen v. Morris*," was decided before Lord Tenterden, in the year 1833 (I

think), respecting the right of a voter to be registered, and which was refused, because he had not paid his taxes. The voter (I believe) brought an action against the proper officer, for refusing to register him, on the ground that the taxes had not been called for in due time, and recovered. Can any of your correspondents inform me whether the case has been reported, and where? N.

### Law of Attorneys.

#### ADMISSION.—MINOR.

Can an articled clerk, who is out of his time, and *under age*, be admitted, and take the necessary oaths? *i. e.* Can a minor be admitted an attorney, take the oaths, and assume the name and title of an attorney of his Majesty's Court of King's Bench; and if so, can he practise immediately, or is he disqualified until he come of age?

MINOR.

### Practice.

#### NEW PLEADING RULES.—REPLEVIN.

Do the new rules as to the mode of pleading apply to replevin suits? The two most recent books on the practice distinctly differ on this point. In Mr. Price's *Forms of Proceedings* in that species of action (p. 648 to 657), it is assumed that they do apply, for the forms or precedents are all framed on that hypothesis. On the other hand, Mr. Chitty gives the old forms, and he states in pp. 503, 508, 519, and 520, in four distinct notes, that it *seems*, they do not, and that *perhaps* the old mode should be continued.

DISCIPULUS.

#### WILL.—POWER.

*F. B.* being seised in fee of several freehold and copyhold estates, and considerable personal property, devised the same as follows:—"I give all my property I die possessed of, both real and personal, in equal shares to my mother and sister Eliza; but I leave it in the power of my mother to settle my sister Eliza's moiety in such a way that no husband shall have power over it without her consent."—Testator appointed his mother and sister executrices to his said will, in which no mention is made of debts, legacies, or annuities. Testator's sister was his heiress-at-law, and is now married, without any settlement having been made. What estate do testator's mother and sister take under the will? and is the power given the mother to settle the sister's share valid?

#### STOCK—HUSBAND AND WIFE.

*A.*, an unmarried lady, was entitled to 24l. a-year stock in the Long Annuities. She intermarried with *B.*, and, after the marriage, the stock was transferred into the joint names of *A.* and *B.*, his wife. The annuity was paid to the husband, or to him and his wife, during his

life. He did not transfer the stock in his lifetime, nor dispose of it by his will; but made *D.* residuary legatee and executor of his will. The wife survived the husband, and has, since his death, transferred the stock into her own, or some other name, having produced at the Bank the certificate of her husband's burial, and claiming to be entitled as the survivor of the two persons in whose names the stock was vested. The bankers and stockbrokers in London are of opinion, that the stock after the husband's death belonged to the executor and not to the widow, for that the husband reduced it into possession by taking the transfer and by receiving the annuity during his life; and that he could at any time have transferred the stock without the concurrence of his wife, although it stood in their joint names; and that transfers are permitted at the Bank by the survivor of the persons in whose names it stands, after the death of one of them, although they may be man and wife.—Is this so?

Y. Z.

### MISCELLANEA.

#### ORIGIN OF THE INNS OF COURT AND CHANCERY.

The inquiries which are now instituted into the Inns of Court may render interesting the following extracts from Dugdale's *Origines Juridicales*:

"That the learned in our laws were antiently persons in holy orders, is out of all question: as also that divers Justices of the King's Courts, and those called itinerant, were bishops, abbots, deans, canons in cathedral churches, archdeacons, and the like; but after the statute of Magna Charta, whereby King Henry the Third appointed that *communia placita non sequantur curiam sed teneantur in aliquo certo loco*, 'tis not to be doubted, but that, as well the students in the law, as the peculiar ministers of each court, being at a better certainty how and where to exercise themselves, began to fix and settle in certain places and stations most proper for their studies, conference, and practice; which that they might the more regularly do, King Edward the First in the 20th of his reign 'did especially appoint John de Meringham (then Lord Chief Justice of the Court of Common Pleas) and the rest of his fellow justices (of that court) that they, according to their discretions, should provide and ordain from every county certain *attornatis et apprenticiis* of the best and most apt for their learning and skill, who might do service to his court and people; and that those so chosen onely, and no other, should follow his court, and transact the affairs therein; the said king and his counsel then deeming the number of seven score to be sufficient for that employment; but it was left to the discretion of the said justices to add to that number, or diminish, as they should see fit.'

"So that soon afterwards though we have no memorial of the direct time, or absolute

certainly of the places, we may safely conclude that they settled in certain hostells or inns, which were thenceforth called inns of court; because the students in them did there not only study the laws, but use such other exercises as might make them the more serviceable to the King's Court, as Sir John Fortescue in the 49th chapter of his book, *de laudibus legum Angliæ*, observeth, where he saith, that the students in the university of the laws (for so he calleth the houses of Court and Chancery) did not only study the laws, to serve the Courts of Justice, and profit their country; but did further learn to dance, to sing, to play on instruments on the ferial days, and to study divinity on the festival, using such exercises as they did who were brought up in the King's Court. So that these hostells being nurseries or seminaries of the Court, taking their denomination of the end wherefore they were so instituted, were called therefore the Inns of Court. But their registers being lost, or by some unhappy accidents perished, I have not seen anything to point out the certainty of their settling in these hostells till King Edward the Third's time, and then the first that hath come to my view, was a demise (Ex. 18 Edw. 3), from the Lady Clifford, of that house nearest Fleet Street, called *Clifford's Inn*, (now one of the Inns of Chancery), *apprenticiis de banco*; which, as I take it, is meant to the lawyers belonging to the Court of Common Pleas. For that there were then such inns and hostells, will appear by this farther testimony, viz. that in 20 Edw. 3, in a *quod ei deforciat*, to an exception taken, it was answered by Sir Richard de Wiloughby, (then a learned Justice in the Common Pleas), and William Skipwith, (afterwards also one of the Justices of that Court), that the same was no exception in that Court, although they had often heard the same for an exception amongst the apprentices in hostells or inns."

### THE EDITOR'S LETTER BOX.

#### EARLY VOLUMES OF THE LEGAL OBSERVER.

In consequence of several applications from new subscribers, who are desirous of obtaining the early volumes of the Legal Observer, the Publisher has arranged for supplying the first four volumes, in boards, at 12s. each, and the first and second volumes of the Monthly Record at 10s. each.

We avail ourselves of the suggestion of a subscriber, to incorporate the Digest of Cases and the Commentaries on the Statutes for the Years 1833 and 1834, into one volume, and

shall continue the same at the close of each year.

**ANNUAL DIGEST OF THE STATUTE AND COMMON LAW for 1833.**—This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Courts, in the Year 1833. Edited by BARRISTERS. Price 12s. boards.

**ANNUAL DIGEST of the STATUTE and COMMON LAW for 1834.** This work comprises all the Statutes effecting an alteration in the Law, and all the Cases reported in the Year 1834. Edited by Barristers. Price 12s. boards.

Some copies remain of the **ANNUAL DIGEST of COMMON LAW**, for the Years 1831 and 1832, which may be obtained in one volume. Price 12s. boards.

The suggestion of a Subscriber, as to the Quarterly Digest, had not escaped the Editors of that part of our work, and shall be attended to in the general Tables of Reports at the end of each year.

We merely announced, as requested of us, the intended publication of the Memoirs of Sir M. Hale, and are not aware of the time when the book will make its appearance, further than as stated in the notification.

The paper which we received some time ago, against *Local Courts*, has been deferred until the new bill on that subject shall make its appearance. Our Correspondent's remarks on the *Law of Arrest*, will be acceptable.

The inaccuracy of expression in one of the articles of "Selections from Correspondence," escaped our notice. The meaning, however, was clear enough, and we can scarcely be expected to re-compose the letters we receive.

*Perpetual Commissioners for taking the Acknowledgments of Deeds.*

Mr. Augustus Pulsford Browne, of Dulverton, for the county of Somerset.

James Boor, of Warminster, for Wiltshire.

We return our thanks to a Correspondent at Plymouth, for his suggestions and contributions. In his next communication will he state the acts to which he refers? We have abstained from inserting more than we deemed generally useful.

The Paper of T. O. B., is acceptable.

**Erratum.**—p. 370, col. 1, line 20, for *non* read *nos*.

# The Legal Observer.

Vol. IX.

SATURDAY, MARCH 21, 1835.

No. CCLIX

— "Quod magis ad nos  
Pertinet, et noscitur malum est, agitamus.

HORAT.

## THE LOCAL COURTS BILL.

There are now three measures which are more or less before the legislature, relating to the administration of justice in the provinces.

The first is the Bill which is to be introduced with the sanction of the government, notice of which has been given—the sole object of which is the creation and establishment of Local Courts.

The second is embraced in the Bill which Sir John Campbell has renewed, relating to the Abolition of Imprisonment for Debt, and which now stands in nearly the same form as that in which it was originally brought in.\* By this Bill, the King is to be authorized to appoint, by commission under the Great Seal, a serjeant-at-law or barrister of ten years standing, for any one or more county or counties, who shall be called a Commissioner, and every such commissioner is to have the rights and privileges of a Judge of a Court of Record; and the King is also to be authorized to appoint Registrars to such Court; and the Commissioner is to have the power of appointing messengers and ushers.

The third measure will arise out of the report of the Corporation Commissioners, some portion of which must relate to the present administration of borough-justice throughout the country, and contain suggestions for the remedy of the grievances relating to it.

This being the state of the general question, we wish to call the attention of the House of Commons to the propriety of con-

sidering all these three measures at the same time, and not legislating on the matter piece-meal. We have always been friendly to the appointment of paid Recorders to all boroughs, whether new or old: and if it were deemed advisable, the jurisdiction of these judges might be extended. It would be easy to give them the power of trying civil matters from the Superior Courts of a certain amount,—in fact, to clothe them with the united authority of a local judge, a commissioner, and a recorder. We are desirous, therefore, that the consideration of the subject, and the introduction of all bills relating to it, should be postponed until the report of the Corporation Commissioners is before the House. The measure of Local Courts might then be referred to a Select Committee; or a bill incorporating the recommendations on the Report with the propositions of Sir John Campbell, might be introduced. We should then have the measure fairly before us in all its bearings, and considerable expense and delay would ultimately be saved. If the House, on the other hand, proceed to consider each Bill separately, it can only take an imperfect view of all.

We understand that the effect of the Law Amendment Act, on several of the circuits, has been already to lessen the civil cause list one half. This fact, which we believe may be relied on, shows how extensive a change has been already effected; and we are only anxious that any further measures should be as perfect and final as possible.

What may be the nature of the recommendations of the Corporation Commissioners on this point, we have no means of ascertaining. Whether the Recorder should be appointed by the Crown, or should be

\* See a full analysis of it, 8 L. O. pp. 162—166.

elected by the constituency of the borough, — his salary, his standing, and the extent of his jurisdiction—all these are minor matters, which we shall be ready to discuss at the proper season. At present, we are only desirous that the time of the legislature should not be wasted, and that all the proper materials should be collected together for framing a lasting and complete act, which may remedy the practical evils in the administration of local justice throughout the country.

## THE LAW OF WILLS BILL.

THIS is intituled, "A Bill for the Amendment of the Laws with respect to Wills." Having in the 8th vol. pp. 232, 245, given nearly a verbatim copy of the Bill, we now subjoin a short abstract of the proposed enactments. We have arranged the clauses under the following principal heads: viz. What Property may be disposed of by Will.—Who may not make a Will.—The mode of executing Wills.—Their Publication.—Interested Witnesses.—Revocations and Alterations.—The Construction of Wills;—and the Jurisdiction of Courts of Equity.

1. The meaning of the following words in the act are defined: "Will," "Real Estate," "Personal Estate," &c.

2. The following statutes and parts of statutes are repealed: 32 Hen. 8, c. 1, and 34 & 35 Hen. 8, c. 5; 10 Cha. 1, sess. 2, c. 2 (I.); secs. 5, 6, 12, 19, 20, 21, & 22, of the Statute of Frauds, 29 Cha. 2, c. 3; 7 Wil. 3, c. 12 (I.); sec. 14 of 4 & 5 Anne, c. 16; 6 Anne, c. 10 (I.); sec. 9 of 14 G. 2, c. 20; 25 G. 2, c. 6 (except as to the colonies); 25 G. 2, c. 11 (I.); and 55 G. 3, c. 192.

### *What Property may be disposed of.*

3. All property may be disposed of by will (Stat. of Wills, 32 Hen. 8, c. 1, s. 1), except estates tail and estates held in joint tenancy.

4. Property acquired after the execution of the will, may pass by it.

5. Contingent interest may be disposed of by will.

6. Rights of entry and of action or suit, may be disposed of by will.

7. Powers of devising to extend to customary freeholds and copyholds, which cannot now be devised.

8. Customary freeholds and copyholds, which might have been surrendered to the use of a will, may be devised without such surrender—see 55 G. 3, c. 192. s. 1.

9. Customary freehold and copyhold land may be devised before admittance.

10. devisees of customary and copyhold estates, capable of being surrendered to the use of the will, to pay, where there has been no such surrender, the like fees as would have been payable on such surrender; and also where the testator was entitled to admittance, and was not admitted, and might after admittance have surrendered to the use of his will, the like fine and fees as would have been payable on such admittance and surrender.—See 55 G. 3, c. 192, s. 2.

11. All estates *pur autre vie* to be devisable.—See Statute of Frauds, 29 Cha. 2, c. 3, s. 12.

12. Estates *pur autre vie* in freehold, to be assets in the hands of the heir, where special occupant, and where there is no special occupant, or the executors or administrators are special occupants, to go to the executors or administrators, and be applied like the personal estate.—See 29 Cha. 2, c. 3, s. 12; 14 G. 2, c. 20, s. 9.

### *Who may not make a Will.*

13. An infant not to be capable of making a will.

[In the bill of last session, the restriction was confined to real property, and it has now been limited in the Select Committee to the age of 17, both as to real and personal property.]

14. A *feme covert* not to be capable of making a will, except of her separate property, by virtue of a power, or of personality with the husband's consent, or to continue an executorship.

### *Corporations.*

15. No devise to a corporation to be valid, except when authorised by act of parliament.—See 34 & 35 Hen. 8, c. 5, s. 4.

### *Mode of executing Wills.*

16. Every will shall be in writing, and signed by the testator, or by some person for him, in the presence of two witnesses at one time, who shall subscribe their names. (See s. 5 of the Statute of Frauds.) No form of attestation shall be necessary.

17. Appointments by will to be executed like other wills, and to be valid, although other solemnities required by the power are not observed.

### *Soldiers' and Mariners' Wills.*

18. Soldiers' and mariners' wills excepted.—See s. 23 of the Statute of Frauds.

19. Act not to affect the provisions of the 11 G. 4 and 1 W. 4, c. 70, s. 48 to 65, with respect to wills of petty officers and seamen in the navy, and non-commissioned officers of marines, and marines.

### *Publication of Wills.*

20. Publication not to be requisite.

\* This exception should be extended to corporations empowered by charter.

*Witnesses.*

31. Gifts to an attesting witness to be void.—See 25 G. 2, c. 6, s. 1.
32. Creditor attesting, to be admitted a witness.—See 25 G. 2, c. 6, s. 2.
33. Credit of the witness to be determined by the Court.—See 25 G. 2, c. 6, s. 6.
34. No devise, where the devise is made void, being examined to the execution of the will, shall afterwards take any benefit or compensation for the same.—See 25 G. 2, c. 6, s. 7.

*Revocations and Alterations of Wills.*

35. No will to be revoked but by another will or codicil, or by a writing executed like a will, or by cancelling, &c.—See s. 6 of the Statute of Frauds.
36. No alteration in any will shall have any effect, unless executed as a will; but may be signed and attested in the margin of the will, or with a memorandum.
37. A will not to be revoked by any subsequent conveyance or act.
38. Will of a woman, to be revoked by marriage.
39. The will of a man, not to be revoked by marriage and the birth of a child.

[This is contrary to the amended bill of the last session, and has been altered by the select committee, rendering such will revoked by marriage, unless a contrary intention appears.]

40. No will revoked to be revived otherwise than by re-execution, or a codicil to revive it, or by cancelling the will which revoked it.

*Construction of Wills.*

41. A will shall be construed to speak from the death of the testator.
42. A residuary devise shall include estates comprised in lapsed and void devises.
43. A general gift shall include estates over which the testator has a general power of appointment.
44. A general devise of the testator's lands, shall include leasehold as well as freehold and copyhold lands.
45. A devise without any words of limitation, shall be construed to pass the fee.
46. The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.
47. No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.
48. Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.
49. Devises of estates tail shall not lapse.
50. Gifts to children, or other issue who leave issue living at the testator's death, shall not lapse.

*Jurisdiction of Courts of Equity.*

51. Courts of equity may set aside wills for fraud.

42. The heir shall not be a necessary party in suits in equity for the execution of a will, or for the administration of assets.

43. Depositions shall not be taken in equity in suits for establishing wills, unless required by a party, at the peril of costs.

[These three clauses were omitted in the amended bill of the last session.]

44. The act not to extend to wills made before 1st Jan. 1836, nor to assets of persons who die before 1st Jan. 1836.

The effect of the bill will probably be to diminish some sources of litigation, arising at present on the mode of executing wills, their construction, revocation, &c. On the other hand, whilst some questions may thus be set at rest, there can be no doubt that new ones will arise out of the change which the proposed act will effect; and we observe that the clauses as to the jurisdiction of Courts of Equity, which were omitted in the last, are restored in the present bill.

One of the principal alterations which the bill proposes to effect, is that of rendering it necessary for all wills, whether of personal or real property, to be executed in the presence of two witnesses. The protection which has been hitherto thought necessary for the benefit of the heir at law, will be thus diminished; it being of course easier to procure two than three witnesses to a fraudulent will: and it requires serious consideration, whether a will of personalty written entirely in the testator's own hand writing, ought not to be deemed sufficient without witnesses.

## THE COPYHOLDS ENFRANCHISEMENT BILL.

THE general scope of this Bill is to *empower*, but not to *compel*, either the Lords of Manors to grant, or their tenants to receive, the Enfranchisement of Copyholds. The general opinion of the Profession appears to be, that the Bill, as at present limited, will be of comparatively small service. We are not, however, prepared to say that compulsory enfranchisement should be immediately enacted. The Real Property Commissioners, on whose Report the present Bill is founded, state that they were obliged to reject all the plans suggested to them for the compulsory abolition of copyhold tenure.

"It appears to us (they say) that the plans of abolition would either work injustice, or that they would introduce complicated, expensive, and inefficient machinery for adjusting the claims of the lord and tenant. These vary so much according to the customs of different manors, that no general rule can be laid down respecting them; and copyhold tenements being generally of small value, they could not afford the expense of the appointment of commissioners to regulate the terms of enfranchisement, or the expense of a trial by jury to ascertain the amount of compensation.

"In the few instances in which the fine is certain, and the tenant is entitled to the timber and minerals, and privileged to commit waste, it might be easy to lay down a rule by which the fine might be converted into a periodical payment, charged on the tenant as a rent; but in general there could not be a just compulsory enfranchisement without a specific and particular valuation of each tenement, and of the lord's interest in it.

"It must likewise be recollected, when compulsory enfranchisement is considered, that the pecuniary circumstances of many individuals may render the advance of money highly inconvenient; that a portion of the tenement to be allotted to the lord by way of compensation, would generally be too minute to be of any value; and that there would be great difficulty in apportioning compensation among all who, in possession or remainder, might be entitled to share it, and in securing small sums to meet future contingent interests.

"All that we deem practicable, and can recommend, is to give facilities to voluntary enfranchisement, where there are particular estates in the manor or in the copyhold tenement, and to introduce certain improvements in the law relating to copyholds while they continue to exist.

"Enfranchisement, we think, must in all cases remain a voluntary proceeding, to be accomplished by a contract of the lord and the tenant. But at present no enfranchisement can be effected unless both parties are entitled to the fee simple, and enfranchisement has no doubt been much impeded by this difficulty.

"We see no objection to enacting, that any lord of a manor seised of an estate not less than for life, shall be empowered to enfranchise any copyhold within the manor, in consideration of a competent part of the copyhold land to be surrendered, and to form part of the manor, or of a competent annual sum, payable by way of rent-charge, out of the tenement, to the lord of the manor for the time being; and that the tenant seised of a like estate in the copyhold shall be empowered to obtain enfranchisement, by giving up part of the copyhold tenement, or charging it with the annual payment.

"Some regulations will be necessary to guard against fraud; but whenever fraud can be proved, it will render the transaction invalid: and there seems no greater reason to

apprehend fraud in this transaction, than in the execution of powers to lease, which are vested in tenants for life by almost every settlement.

"Perhaps it may be permitted, that where the value of the enfranchisement exceeds a certain sum, the consideration, instead of a rent, may be a sum of money, to be paid to trustees nominated by each of the parties, or to the Accountant-General of the Court of Chancery or Exchequer, upon trust, to be applied in redemption of the land-tax, or the discharge of incumbrances, or to be laid out in land, to be settled to the uses to which the manor stands limited, and invested, in the mean time, in the public funds.

"We think that it should be provided, that an enfranchisement, in consideration of part of the land, or of a rent, whether between persons supposed to be seised in fee, or such as appear to have only partial estates, shall not be avoided by reason of any defect in the title, either of lord or tenant. Great inconvenience is now felt from the necessity of investigating the title of the lord, when an enfranchisement is to take place; and during a long course of years, upon every alienation of the enfranchised land, an investigation is necessary of the double title, *i. e.* the title to the manor and the title to the copyhold tenement. In case of eviction, little injury can be sustained on either hand; for, the lord will have in the land or rent an equivalent for what is lost by the enfranchisement; and the tenant will have an equivalent in the enfranchisement for what is given to the lord. Such instances of eviction will be exceedingly rare; and the aggregate of inconvenience arising from them must be infinitely small, when compared with what would arise from the continual double investigation of title, which must otherwise take place on every dealing with an enfranchised copyhold. These propositions, however, will require modification with respect to manors held by the church.

"It may encourage enfranchisements, and prevent disputes respecting the extent of manors, to provide that the tenement, when enfranchised, shall be held of the manor. At present, a copyhold tenement being part of the lord's demesne, is, when enfranchised, held of the superior lord of the fee; that is, of the same lord of whom the manor is held; and it ceases to be parcel of the manor, whereby the lord loses his manorial privileges.

"We would further propose, that when by purchase, or any other means, a copyhold tenement of inheritance unites with the manor, the lord shall be forbidden to regrant it as a copyhold; and that there shall be no further grants of parcels of the waste to be held by copy of court-roll, in manors where the waste is supposed to have had a quality of admitting of such grants with the assent of the homage.

"In the first place, we think that all peculiar customs respecting descent, curtesy, and dower, should at once be abolished; and that common law rules upon these subjects, for freehold land, as modified by statutes, should universally prevail. A great source of difficulty,

dully, and expence, in the alienation of copyhold lands, and of litigation respecting them, would thus be removed.

"We think that a will of copyhold land should be made with the same formalities as a will of freehold land."

"We think that a power should be given to the copyhold tenant to grant a lease at rack-rent for twenty-one years, out of his own interest, without license of the lord. Where the fine is certain, this cannot prejudice the lord; and where the fine is arbitrary, it must be for his advantage."

"We think that copyhold land should be subject to debts, in the same manner as freehold land, and that whatever remedy is given to creditors over the one, should extend over both. The notion that the lord was not to have a tenant forced upon him by means of an execution, is an obsolete subtilty unconnected with existing rights of property."

"The risk which might be introduced into the title to copyhold lands, by making them liable to the execution of the Crown, may be obviated by confining the remedy to debts due to the subject; but we hope to see the foundation of the objection entirely removed, by an accessible register of all Crown debts and obligations intended to be binding on the land."

"It seems impossible to interfere with the rights of the lord and the tenant, as to timber and materials; and it can only be hoped, that such an irremediable evil of the tenure will induce parties to avail themselves of the new means furnished to them of putting an end to it."

"But heriots due to the lords of manors, whether from copyhold or freehold tenants, we think should be abolished, upon a pecuniary commutation."

"We propose that the claim to the heriot, in specie, shall be commuted into a right to a sum of money, for which the lord shall be allowed to distrain on the tenement, or to maintain an action against the person succeeding to the tenancy: even if a sum so low as five pounds were paid for each heriot, not only would the tenant be greatly relieved, but the change would probably be found for the advantage of the lord, as he would not then scruple to enforce his right, and no attempt would be made to evade it. If it had been found impossible to indemnify the lord, perhaps this might have been thought a case in which the supposed interest of the individual must give way to the public good."

"At present the lord's alienation of the freehold of any of his copyholds, separates them from the manor, and the copyholders are deprived of the power of conveying their estates at law. To remedy this inconvenience, we propose that copyholds may always be conveyed in the manor court, as if the freehold of them remained part of the manor."

"In order to remove the difficulty of distinguishing copyhold from freehold land, we propose, that where both the freehold and copyhold are held in fee-simple, the owner or owners of the land, with the lord for the time being,

by the consent of the homage to be given after a survey, may agree and determine upon the lands, or any of the lands, which shall be copyhold."

We think that much of the reasoning of the Commissioners against compulsory enfranchisement is beside the question. They contemplate a reciprocal power of compulsion, and enlarge on the evils to small copyholders, if they should be obliged to pay for enfranchisement, when they are not prepared to do so. But where would be the injustice of rendering the enfranchisement compulsory on the lord of the manor, and optional with the tenant? The landlord would always have ample compensation, and the difficulties and expence of ascertaining the amount need not be encountered by the tenant, unless it suited his purpose. The great evil of the present system is, that buildings and improvements are generally prevented, in consequence of their value being taken advantage of by the lord of the manor, whenever a change of the copyholder's property occurs. The present Bill goes but a very little way towards removing the evil.

#### ENFRANCHISEMENT OF COPYHOLDS.

This is entitled "A Bill to enable Persons having only partial Estates to enfranchise and obtain the Enfranchisement of Lands held by Copy of Court Roll," and the proposed enactments are as follow:—

That in the construction of this act the word "Manor" shall extend to a manor of any tenure whatsoever; and the word "Lands" shall extend to manors, messuages, lands, tenements, tithes, and hereditaments, whether corporeal or incorporeal, or any undivided share thereof, and shall, except where otherwise expressed, mean exclusively manors, messuages, lands, tenements, tithes, and hereditaments, whether corporeal or incorporeal, which now are or hereafter shall be held by copy of court roll, for an estate of inheritance, and for every other estate where, according to the custom of the manor of which the lands are parcel, the lord of such manor is compellable, on the determination by effluxion of time of the grant under which the lands shall for the time being be held by copy of court roll, to re-grant such lands to be held by copy of court roll, or any undivided share thereof: and the word "Estate" shall extend to an estate in equity as well as at law: and the expression "Particular Estate" shall include every estate whatsoever, except an estate in respect of or as incidental to which any person now is or hereafter shall be as to manors or lands (not being manors or lands held by copy of court roll) enabled, independently of this act, to convey or dispose of such manors or lands for his own benefit, for an absolute and indefeasible estate in fee simple; and except an estate in



respect of or as incidental to which any person now is or hereafter shall be, as to manors or lands held by copy of court roll, enabled, independently of this act, to convey, dispose of, or surrender such manors or lands for his own benefit, for the whole estate or interest for which such manors or lands now or hereafter shall be granted out to be held by copy of court roll; and except any power of appointment already created or hereafter to be created under which, independently of this act, the donee of such power now is or hereafter shall be as to manors or lands, (not being manors or lands held by copy of court roll), enabled to appoint for his own benefit, for an absolute estate in fee simple, or to carry into effect the objects and purposes of this act; and except any power of appointment already created or hereafter to be created, under which, independently of this act, the donee of such power now is or hereafter shall be, as to manors or lands held by copy of court roll, enabled to appoint for his own benefit, for the whole estate or interest for which such manors or lands now are or hereafter shall be granted out to be held by copy of court roll, or to carry into effect the objects and purposes of this act; and except, both as to manors or lands (not being manors or lands held by copy of court roll) and as to manors or lands held by copy of court roll, an estate vested in any person by way of mortgage or charge, or as a mere lessee or assignee of any lease; and except, both as to manors or lands (not being manors or lands held by copy of roll), and as to manors or lands held by copy of court roll, an estate for a term of years absolute vested in any person not being a mere lessee or assignee of any lease: and the expression "Annual Rent" shall mean exclusively an annual rent granted in consideration of the enfranchisement of lands under this act: and the expression "Apportioned Annual Rent" shall extend to an annual rent granted in consideration of the enfranchisement of lands under this act, and also to any apportioned part of such annual rent, and any undivided share thereof respectively: and the word "Person" shall extend to a body politic, corporate, or collegiate, as well as an individual: And every word importing the singular number only shall extend and be applied to several persons or things, as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things: and every word importing the masculine gender shall extend and be applied to a female as well as a male: provided always, that those words and expressions occurring in this clause to which more than one meaning is to be attached shall not have the different meanings given to them by this clause, in those cases in which there is any thing in the subject or context repugnant to such construction.

*Power to enfranchise.*

2. That if at any time after the *thirty-first day of December, one thousand eight hundred and thirty-five*, there shall be subsisting in any manor, or any undivided share thereof, any

particular estate, then it shall be lawful for the person seised or possessed of, or entitled to, in his own right, such manor or undivided share thereof, for such particular estates, or the first of such particular estates, (if more than one), whether such person shall be so seised, possessed, or entitled, in possession, or in remainder or reversion expectant on the determination of any estate vested in any person as a mere lessee or assignee of any lease, or expectant on the determination of any estate for a term of years absolute vested in any person not being a mere lessee or assignee of any lease, to enfranchise all or any of the lands parcel of such manor: provided nevertheless, that it shall not be lawful for any person so seised, or possessed of, or entitled to an undivided share of any manor, to enfranchise under this act any lands parcel of such manor, unless the person for the time being, seised, or possessed of, or entitled to the other undivided share of such manor shall concur in enfranchising such lands.

3. That if at any time after the *thirty-first day of December, one thousand eight hundred and thirty-five*, there shall be subsisting in lands any particular estate, then it shall be lawful for the person seised or possessed of, or entitled to, in his own right, such lands for such particular estate, or the first of such particular estates (if more than one,) whether such person shall be so seised, possessed of or entitled, in possession, or in remainder or reversion expectant on the determination of any estate vested in any person as a mere lessee or assignee of any lease, or expectant on the determination of any estate for a term of years absolute vested in any person not being a mere lessee or assignee of any lease, to obtain the enfranchisement of all or any of such lands: Provided nevertheless, that it shall not be lawful for any person so seised or possessed of or entitled to an undivided share of lands, to obtain under this act the enfranchisement of such lands, unless the person for the time being seised or possessed of or entitled to the other undivided share of such lands, shall concur in obtaining the enfranchisement of such lands.

*Consideration for Enfranchisement.*

4. That every enfranchisement of lands under this act shall be made for all or any of the considerations following: (that is to say) the consideration of a grant of an annual rent in fee to be thenceforth charged on and issuing out of the lands enfranchised, or the consideration of a conveyance of lands parcel of the same manor as the lands enfranchised, and subject to the same uses and trusts as the lands enfranchised shall be subject to at the time of such enfranchisement, or the consideration of the payment of a gross sum of money; and the amount of the rent or sum of money, or the lands to be respectively granted, paid or conveyed, as a consideration for the enfranchisement of lands under this act, shall be fixed on by the persons respectively enfranchising and obtaining the enfranchisement of such lands; and the consideration for every enfranchisement of lands

under this act shall be either all or such one or more of the considerations aforesaid as the persons respectively enfranchising and obtaining the enfranchisement of such lands shall determine.

5. That if the consideration for the enfranchisement of any lands under this act shall be either wholly or in part the grant of an annual rent, then it shall be lawful for the person empowered by this act to obtain the enfranchisement of such lands to grant to the person enfranchising the same, and his heirs, an annual rent of the amount fixed on, and to charge the same on the lands enfranchised, and to make the same payable by equal half yearly payments; and the annual rent so granted shall be a rent service, and thenceforth parcel of the same manor as the lands enfranchised.

6. That if the consideration for the enfranchisement of any lands under this act shall be either wholly or in part the conveyance of lands, then it shall be lawful for the person empowered by this act to obtain the enfranchisement of the lands proposed to be enfranchised, to convey to the person enfranchising the same, and his heirs, the lands fixed on as the consideration either wholly or in part for such enfranchisement.

7. That if the consideration for the enfranchisement of any lands under this act shall be either wholly or in part the payment of a gross sum of money, then it shall be lawful for the person empowered by this act to obtain the enfranchisement of such lands, to charge the same with the sum fixed on as the consideration either wholly or in part for such enfranchisement, and for securing the payment of such sum, with lawful interest for the same, to demise, by way of mortgage, for any term of years, the lands enfranchised or any part thereof to the person who shall advance and lend such sum, or to such other person as he shall appoint, so as such demise be made with a proviso or condition declaring that such demise shall be void on payment of the sum thereby secured, with the interest thereof, at a time to be therein appointed, and also with a covenant to pay and keep down the interest of the sum thereby secured, so that no person afterwards becoming entitled to such lands, shall be liable to pay any further or larger arrear of interest than for *six calendar months* preceding the time when his title to the possession of such lands shall have commenced; and every such demise shall be good and effectual in the law for the purposes thereby intended.

8. That if at any time while an apportioned annual rent shall remain charged on any lands enfranchised under this act, there shall be subsisting in such apportioned annual rent any particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not) then it shall be lawful for the person seised or possessed of, or entitled to in his own right, such apportioned annual rent for such particular estate, or the first of such particular estates (if more than one,) whether such person shall be so seised, possessed or entitled in possession, or in re-

mainder or reversion expectant on the determination of an estate for a term of years absolute, to divide and apportion such apportioned annual rent, and to declare what parts and proportion thereof shall be thenceforth severally charged upon any part of such lands; and after such apportionment, such apportioned annual rent shall be payable in such parts and proportions, and chargeable only upon such parts of such lands as shall be so declared: Provided nevertheless, that no division or apportionment of an apportioned annual rent shall be made under this act, except with the concurrence of the person seised or possessed of the lands enfranchised, on which such apportioned annual rent shall for the time being be charged.

9. That if at any time while an apportioned annual rent shall remain charged on any lands enfranchised under this act, there shall be subsisting in the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, any particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not,) then it shall be lawful for the person seised or possessed of or entitled to in his own right for such particular estate, or the first of such particular estates (if more than one), the lands so enfranchised and on which such apportioned annual rent shall for the time being be charged, whether such person shall be so seised, possessed or entitled in possession, or in remainder or reversion expectant on the determination of any estate vested in any person as a mere lessee or assignee of any lease, or expectant on the determination of an estate for a term of years absolute vested in any person not being a mere lessee or assignee of any lease, to concur in any division or apportionment of such apportioned annual rent, and to agree what part and proportion thereof shall be thenceforth severally charged upon any part of such lands.

10. That if at any time while an apportioned annual rent shall remain charged on any lands enfranchised under this act, there shall be subsisting in such apportioned annual rent any particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not,) then it shall be lawful for the person seised or possessed of or entitled to, in his own right, such apportioned annual rent for such particular estate, or the first of such particular estates, (if more than one,) whether such person shall be so seised, possessed or entitled in possession, or in remainder or reversion expectant on the determination of an estate for a term of years absolute, to release from such apportioned annual rent, all or any of the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged: Provided nevertheless, that any person by releasing from any apportioned annual rent part of the lands enfranchised under this act, and on which such apportioned annual rent shall for the time being be charged, shall not be deemed or taken to have released the whole of such lands from such apportioned annual rent.

11. That if at any time while an apportioned annual rent shall remain charged on any lands enfranchised under this act, there shall be subsisting in the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, any particular estate, (whether such estate shall have been subsisting at the time of the enfranchisement of such lands or not,) then it shall be lawful for the person seised or possessed of or entitled to, in his own right, for such particular estate, or for the first of such particular estates (if more than one), the lands so enfranchised and on which such an apportioned annual rent shall for the time being be charged, whether such person shall be so seised, possessed of or entitled in possession or in remainder or reversion expectant on the determination of any estate vested in any person as a mere lessee or assignee of any lease, or expectant on the determination of an estate for a term of years absolute vested in any person not being a mere lessee or assignee of any lease, to obtain for the benefit of himself and all other persons seised or possessed of or entitled to any estate in the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, a release of such lands from such apportioned annual rent: Provided nevertheless, that it shall not be lawful for any person so seised or possessed of or entitled to an undivided share only of any lands enfranchised under this act, and on which any apportioned annual rent shall for the time being be charged, to obtain a release of such lands or of his undivided share thereof from such apportioned annual rent, unless the person seised or possessed of or entitled to the other undivided share of such lands shall concur in obtaining such release.

12. That if at any time, while any lands enfranchised under this act, shall remain charged with an apportioned annual rent, it shall be desired to release under this act from such apportioned annual rent, the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged; then the consideration for such release shall be both or one of the considerations following; (that is to say) the consideration of a conveyance of part of the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, or the consideration of the payment of a gross sum of money, and the lands so enfranchised and the amount of the sum of money to be respectively conveyed and paid as a consideration for such release, shall be fixed on by the persons respectively seised of or entitled to such apportioned annual rent and lands; and the consideration for every such release shall be either both or such of the said considerations as the persons respectively seised of or entitled to such apportioned annual rent and lands shall determine.

13. That if it shall be proposed to release under this act from an apportioned annual rent, lands enfranchised under this act, and on which such apportioned annual rent shall for the time being be charged, and the consideration for such

release shall be either wholly or in part the conveyance of part of the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged; then it shall be lawful for the person empowered by this act to obtain a release from such apportioned annual rent to convey to the person making the release and his heirs such part of the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, as shall have been fixed on as the consideration either wholly or in part for such release.

14. That if it shall be proposed to release under this act from an apportioned annual rent, any lands enfranchised under this act, and on which such apportioned annual rent shall for the time being be charged, and the consideration for such release shall be either wholly or in part a gross sum of money; then it shall be lawful for the person empowered by this act to obtain a release from such apportioned annual rent to charge with the sum fixed on as the consideration, either wholly or in part, for such release, the lands so enfranchised, and on which such apportioned annual rent shall for the time being be charged, and for securing the payment of such sum with lawful interest for the same, to demise, by way of mortgage, for any term of years, such lands or any part thereof to the person who shall advance and lend such sum, or to such other person as he shall appoint, so as such demise be made with a proviso or condition declaring that demise shall be void on payment of the sum thereby secured, with the interest thereof, at a time therein to be appointed; and also with a covenant to pay and keep down the interest of the sum thereby secured, so that no person afterwards becoming entitled to such lands shall be liable to pay any further or larger arrear of interest than for *six calendar months* preceding the time when his title to the possession of the lands so demised shall have commenced; and every such demise shall be good and effectual in the law for the purposes thereby intended.

15. That every person having a particular estate in an apportioned annual rent may, under this act, respectively divide and apportion and release the same, notwithstanding the lord of the manor who enfranchised the lands on which such apportioned annual rent shall for the time being be charged, or the person who divided and apportioned such apportioned annual rent was at the time of such enfranchisement and apportionment respectively enabled, independently of this act, to enfranchise such lands, or (as the case may be) to divide and apportion such apportioned annual rent.

16. That every person having after the enfranchisement of any lands under this act a particular estate in the lands so enfranchised, and on which any apportioned annual rent shall for the time being be charged, may under this act concur in the apportionment of such apportioned annual rent, and obtain the release of such apportioned annual rent, and as a consideration either wholly or in part for such re-

lease, convey any of the lands so enfranchised, or charge the same with a gross sum of money, and demise the same by way of mortgage for any term of years, to any person advancing such sum, notwithstanding the person obtaining the enfranchisement of such lands, or (as the case may be) concurring in the division or apportionment of such apportioned annual rent, was at the time of such enfranchisement and apportionment respectively enabled independently of this act to obtain the enfranchisement of such lands, and to concur in the apportionment of such apportioned annual rent.

[To be continued.]

## THE PROPERTY LAWYER.

No. XLI.

### ON DEVISES TO WITNESSES TO WILLS.

By the 25 G. 2, c. 6, s. 1, it is enacted, that if any person shall attest the execution of any will or codicil, which shall be made after the 24th day of June, 1752, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate, other than and except charges on lands, tenements, or hereditaments, for payment of any debt or debts that shall be then given by such devise, legacy, estate, interest, gift, or appointment; shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act, [the Statute of Frauds,] notwithstanding such devise, &c. One question under this section has been, whether it extended to wills of personal estate; and it seems, that as to this, it has long been the practice of the Ecclesiastical Court, when a will of personal estate was attested by legatees, to consider the attestation, and not the legacy, to be void. But in the case of *Lee v. Summersgill*, 17 Ves. 510, Sir William Grant, notwithstanding the practice, held, that the statute extended as well to wills of personal as of real estate. This decision was, however, considered, and expressly overruled, by Sir John Nicholl, in *Brett v. Brett*, 3 Add. 214; S. C. 1 Hagg. 59; so that the former practice may be considered as restored, and has been very recently recognized by the present Vice Chancellor, in the case of *Foster v. Banbury*, 3 Sim. 40; and by Sir John

Leach, M. R., in *Emanuel v. Constable*, 3 Russ. 436.

Another question on the statute lately arose at *Nisi Prius*, in which the circumstances were these:

Ejectment to recover a dwelling house.—The lessor of the plaintiff claimed the property in question, as heir at law of John Taylor, deceased. The defendant claimed it as his devisee. The testator by his will, dated 25th of December, 1828, executed in the presence of, and attested by the defendant, and also three other witnesses, devised the property to the defendant. The defendant put in the will, and proved it by calling one of the other attesting witnesses, who spoke to the execution of it, in the presence of himself and the three other witnesses.

Alexander, for the defendant, insisted, that the statute was clearly intended to apply only to cases where the evidence of the devise was wanted, for the purpose of supporting the will. In the present case, there were three credible witnesses, independently of the defendant (the devisee); the devisee's attestation might be dispensed with altogether, and considered as struck out.

Bolland, B., thought the words of the statute were conclusive, and directed the jury to find a verdict for the lessor of the plaintiff. He, however, reserved the point, and gave Alexander leave to move upon it.

Verdict for the plaintiff.

Alexander accordingly moved the following morning before the Lord Chief Justice Denman, and obtained a rule nisi to set aside the verdict on the point reserved. In the course of Hilary term 1834, cause was shewn against the rule before Lord Denman, C. J., and Mr. Baron Bolland.

Lord Denman, C. J.—I did not entertain much doubt upon this case, when the motion was made at Lancaster for a new trial. I thought then that the words of the statute were too peremptory to be got over, and I think so still. The exclusion of the evidence of attesting witnesses to wills, where those witnesses happen to be devisees, was felt to be a great inconvenience, and the legislature thought proper to take this method (certainly a somewhat violent method) of remedying the inconvenience. The case is within the very words of the statute; and it is by no means made out that it is not within the mischief too. In regard to the cases which have been last cited, they are distinguishable from the present case; in those cases the will was of personalty only: here the will is of real property. It is unnecessary, therefore, to give any opinion upon the propriety of those decisions.

Bolland, B.—The case before Sir William Grant seems to go the full length of the present. It was there held, that the legacy to the subscribing witness was void, although the will respected personalty only, and the attestation was consequently unnecessary. That case appears to have been much considered by the

very learned Judge who decided it; and he states in his judgment, that he had inquired into the practice of the ecclesiastical courts upon the subject. I should therefore be slow to overrule that authority. It appears to me that this case falls completely within the operation of the act, and that the verdict was therefore correct.

Rule discharged.—*Doe d. Taylor v. Mills*, 1 Moody & Rob. 288.

Perhaps it is not too much to say, that the qualified recognition of *Lees v. Summersgill*, by Mr. B. Bolland, will not restore its authority, against the express decisions on the point by Sir John Nicholl, in *Brett v. Brett*; Sir John Leach, M. R., in *Emanuel v. Constable*; and Sir L. Shadwell, in *Foster v. Banbury*. We may consider, therefore, that *Doe d. Taylor v. Mills*, only decides that the stat. 25 G. 2, c. 6, makes void a devise to an attesting witness, although there be three other attesting witnesses to the will.

## DISTRIBUTION OF AN INTESTATE'S PERSONAL ESTATE.

Sir,—Neither Gwynne on Probates, reviewed 8 Leg. Obs. 455, nor the Treatise on Descent, reviewed 8 Leg. Obs. 51, appears sufficiently explicit in regard to the distribution of an intestate's personal estate; if you, therefore, oblige me by inserting the following summary, I think it will serve as another useful table not hitherto published in your work.

### Wife.

If the intestate leaves a widow and children, the widow shall take one-third part of the surplus of his effects. If he leaves no children, she shall have a moiety, 22 & 23 Car. 2. ss. 5 & 6: and the widow takes as widow by the express words of the statute, and not as being of kin, for the wife is (as such) of no kin to her husband, 9 Atk. 761, *Worsley v. Johnson*. A widow takes although she be a papist; for in the case of dying intestate, it is the act of the law, it is the Legislature, that gives those distributive shares to the widow and next of kin. It is a succession *ab intestato* to a personal estate, similar to a descent of land, where an heir, though a papist, of above the age of 18 years and six months, may inherit. *Davors v. Deuses*, 3 P. W. 48.

### Husband.

The stat. does not extend to the estate of a *feme covert*, and therefore the husband is entitled to her effects, 29 Car. 2, c. 3, s. 25; 2 Black. Com. 515; *Squib v. Wyn*, 1 P. W. 379; *Elliot v. Collier*, 3 Atk. 526. The personal property of an

illegitimate woman, settled on her marriage on herself for life, with power of appointing it absolutely in default of issue, and in default of such appointment then to go to her next of kin, will in these events go to the husband who survives and administers, as against the crown. *Hawkins v. Hawkins*, M. T. 1834; 9 Leg. Obs. 267.

### Children.

If the intestate leaves children, his effects, viz. the whole if he leaves no widow, and two-thirds if he does leave one, shall be equally divided between them, whether males or females, 22 & 23 Car. 2. c. 10, s. 7. If the intestate leaves only one child, such case is not to be considered as omitted by the statute; therefore, in case he also leave a wife, she shall have only a third part, and the other two-thirds shall go to such child. *Burnet v. Mann*, 1 Ves. 156; 4 Burn. Ec. L. 344; 2 Freem. 230; 2 P. W. 446. No difference is made between the half and the whole blood, but they are equally entitled, as being of equal propinquity to the deceased. 3 Bro. Abr. 74; 1 P. W. 53; 2 Roberts on Wills, 126. Posthumous children are equally entitled with those born in the lifetime of the intestate. *Ball v. Smith*, 2 Freem. 230.

When distribution is made among children, they must bring their advancement into hotch-pot or *collectio bonorum*. Prec. Chan. 182; 2 P. W. 560; Fitz. 285; 2 P. W. 440, 441; 3 P. W. 317. For what is and is not an advancement, the reader is referred to the "Treatise on Descent," p. 30, n°, where most of the cases appear collected.

### Representatives among Descendants.

If some of the children of the intestate die in his life-time leaving children, such children shall stand in *loco parentis*, and shall take their deceased parent's share; as if there be two sons, and one dies leaving three children, and the other survives the intestate, the three children of the deceased son shall have one moiety, and the surviving son the other. And this right of his representation among the descendants of the intestate, is not confined within any degree, 22 & 23 Car. 2. s. 7. But if all the children of the intestate die in his life-time, leaving issue, then the distribution shall be to them (such issue) *per capita*, they claiming in their own right *pro sui cuique jure*, and not by representation; for where all the parents are dead, their children take *per capita*; but where some of them only, then they take *per stirpes*, Prec. Chan. *Walsh v. Saxe*, 2 Ves. 215; *Lloyd v. French*, 3 P. W. 50; *Davors v. Davers*, 1 P. W. 495; *Brown v. Littlewood*, 1 Atk. 434; *Durrant v. Priestwood*, 2 Black. Com. 517, 532.

### Great Grand-Children.

If there be no children, then the great grand-children shall take equally *per capita*, and so in the lineal descendants of the intestate *ad infinitum*, 1 Com. Dig. 273; 1 Atk. 457; 1 P. W. 127, 346.

**Father.**

If the intestate leaves no children, or representatives of them, the father (if living) shall take in exclusion of the mother, brothers, and sisters. 2 Black. Com. 516.

**Mother, Brothers, and Sisters.**

If the father be dead, the mother, brothers, and sisters shall take equally. 1 Jac. 2. c. 17, s. 7; 2 Bla. Com. 516; as if there be a mother, and four brothers and sisters, each shall have one-fifth. 2 P. W. 344.

**Representatives.**

If some or all such brothers or sisters die leaving children, such children shall stand in *loco parentis*; as if there be a mother, widow, and three children of a deceased only brother, the widow shall take her moiety, and the mother and children one-fourth each, for they take by representation. 1 Jac. 2. c. 17, s. 7; *Kelway v. Same*, 3 P. W. 366. But this right of representation among *collaterals* shall not extend further than brothers' and sisters' children. *Stanley v. Stanley*, 1 Atk. 457; 22 & 23 C. 2. c. 10, s. 7: And if there be a brother's grandson, and a sister's sons, they exclude the grandson, who shall take nothing. 1 P. W. 25; *Ld. Raymond*, 571, s. 6.

**Mother.**

If there be no brothers, sisters, or descendants of such brothers or sisters, the mother shall take the whole, she being entitled before, 1 Jac. 2., though there were brothers or sisters; and that statute does not take away her right; but only as to them and their issue. 2 Black. Com. 516 & 532; 1 Atk. 457; for to a grandson of a brother, who must claim in his own right, the mother shall be preferred. 1 Atk. 475. A mother-in-law shall take nothing. *Duke of Portland v. Duchess of Portland*, 2 P. W.

**Brothers and Sisters, where no Mother.**

If there be no mother, the brothers and sisters take equally, their children standing in *loco parentis*.

**Next of Kin.**

If there be neither brother nor sister, or issue of them, then distribution shall be made without reference to those, whoever they may be, who are next in equal degree of kindred to the intestate; and the degrees of kindred shall be computed according to the civil law. Prec. Ch. 594; 2 Atk. 117; 1 Ves. 334. And if there are relations both on the father and mother's side, in equal degree, they shall take, 1 P. W. 53; 1 Com. Dig.; *Ld. Raymond*, 500.

**Grandfather.**

If there be either brother or sister, or children of them, the grandfather shall not take; for although the grandfather is in equal degree with the brothers and sisters, yet they shall always take first. 1 Atk. 762. But though there be issue of brothers or sisters, yet if they do not claim by representation, but in their own right, as where all the brothers, sisters, and mother are dead, the grandfather shall be preferred, he being nearer in degree; for as

the grandfather is nearer than the uncle, he therefore shall exclude him. Prec. Ch. 528; 1 P. W. 41; 1 *Ld. Raymond*, 584; *Lloyd v. Klein*, 1 Ves. 215. So as to nephews: a brother's child is in the same degree as the uncle; he must for the same reason exclude him. 1 Atk. 454; 2 Ves. 218.

**Great Grandfather, Uncle, Aunt, Nephew, and Niece.**

If no grandfather, then great grandfather, uncles, aunts, nephews, and nieces, (or brothers or sisters' children claiming in their own right,) shall take together, being in equal degree; 1 Atk. 454; 2 Ves. 213; Prec. Ch. 593. For living uncles and aunts shall exclude the children of deceased uncles and aunts, they being too remote to claim by representation; and if considered as claiming in their own right they are a degree further from the intestate; 1 P. W. 594. *Brown v. Littlewood*, Prec. Ch. 28; 11 Vin. Abr. 196; as the nephews or nieces or children of brothers or sisters shall exclude their grandfather, when claiming in their own right, as before observed.

**Great Great Grandfather, Great Uncle, First Cousin, and Great Nephew.**

If there be neither great grandfather, uncle, nephew, or niece, then the great great grandfather, great uncle, brother's grandson (they now claiming in their own right and not by representation) shall take together, being in equal degree; *Thomas v. Kittrimbe*, 1 Ves. 333.

Distribution is not to be made till a *twelvemonth* after the intestate's death—yet, the interest vests immediately in the persons entitled (saving as to a posthumous claimant); so that if he die within the year his share shall go to his representatives; 2 Wms. 448; *Edwards v. Freeman*, 3 P. W. 49; 22 and 23 C. 2, c. 10, s. 8.

After the children of brothers and sisters, distribution must always be made *per capita* among collaterals; Com. Rep. 87; *Pitt v. Pitt*, 1 *Ld. Raymond*, 476, s. 8; 1 P. W. 25. *Brown v. Littlewood*, and *Shaw v. Harding*, Prec. Ch. 28 & 57; 3 P. W. 50.

But where it is said above that the uncle or aunt, and nephew or niece, are in equal degree, the rule does not apply for the purpose of distribution to the case where the intestate dies without issue, leaving one or more brother or sister and an uncle or aunt for the surviving brother or sister to a representation, and therefore, the children take the parent's share, and the uncle or aunt is excluded. But if the deceased left no brother or sister, an uncle and aunt take in their own right in a proper degree, *per capita*. 2 Ves. 213.

**Bastard.**

If a bastard dies intestate, or if any other person having no wife, children, or kindred, dies intestate, his effects devolve on the King, who usually makes a grant of them. 2 Black. Com. 505. *Doug. 542. Vide supra*, "Husband."

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## PRACTICE.—ORDER TO AMEND.

*A plaintiff, after answers to his original bill, files his replication, and afterwards obtains a special order to withdraw the replication, and amend his bill. Before the amended bill is answered, he obtains the common order of course to re-amend. Held, that this last order was regular.*

The original bill was filed on the 21st Nov. 1831, for the purpose of setting aside annuities granted to the defendants. Answers were put in on the 14th May, 1832, and the plaintiff filed a replication. On the 14th June, 1833, he obtained leave, upon special motion, to withdraw his replication and amend his bill, and at the same time he obtained an order to revive the suit, which abated by the death of one of the defendants. After the amended bill was put on the file, the defendants obtained an order for six weeks time to answer the amended bill; and on the 6th of August, 1834, before the answers were put in, the plaintiff obtained an *ex parte* order to amend the amended bill. The amendments were made largely on both occasions, so as to require new engrossments of the bill each time. A motion was made before the Vice-Chancellor to discharge this last order, and to take the bill off the file for irregularity; but he refused the application, with costs.

Mr. Barber and Mr. Wakefield, on behalf of different defendants, now moved, by way of appeal from his Honor's decision, for the discharge of the last order to amend, as being irregular, and for taking the bill off the file. By the 15th order of those issued in April, 1822, the order to withdraw replication and amend, is required to be on special motion, as it was in this case. Would it be consistent with common sense, that a subsequent amendment could be upon an order of course? Besides, the 13th of the same orders, amended by the 13th order of 1831, and the 20th of Lord Brougham's orders, issued in December, 1833, as well as the decision upon the first-mentioned of these orders, in the case of *Turleton v. Dyer*,<sup>1</sup> shew that the plaintiff is irregular in obtaining this second order to amend as of course; for the plaintiff could not be in a better situation by the special order for leave to withdraw replication and amend, than if that leave had been obtained *ex parte*.

Mr. Rolfe and Mr. Elderton opposed the motion. They did not deny the construction put upon the 13th of the first set of orders by the decision of the case of *Turleton v. Dyer*. That order was amended in Nov. 1831, by the insertion of the words, "after an answer has been filed;" meaning clearly, that although after answer, [one order, without notice, may be obtained to amend, but before answer the

plaintiff may amend, as of course, as often as he pleases. Now the amended bill in this case was a new bill put on the file, and the defendants had not answered when the order was obtained *ex parte* to amend it. They might prevent the obtaining more than one order of course to amend, if they choose to put in their answer. The defendants, as they had not answered, could not be damaged by any number of amendments. They had put in answers to the original bill, but not to the existing bill, which is equal to a new bill; so that this order now complained of is within the rule.

The Lord Chancellor.—The question then comes to this: whether an answer to an amended bill is to be considered an answer to the original bill or to a new bill. I will send now to the Vice-Chancellor for his opinion on that.

His Lordship afterwards said, that it had been his own impression, that the answer named in the 13th order may be answer to an amended bill. The Vice-Chancellor is of the same opinion as to the construction of that order; and his Honor added his belief, that that construction coincided with the intention of the Judges who pronounced those orders. His Lordship refused the motion, but without costs, as it was a fair question to raise.

*Wharton v. Swan, Watson, and others, at Lincoln's-Inn Hall, Feb. 16th, 1835.*

## Rolls Court.

PATENT-RIGHT.—ARGUMENT.—TRIAL AT LAW.  
—INJUNCTION.

*A bill for rescinding an agreement for fraud, alleged, that the defendant agreed verbally to forego its benefits, and actually did forego them for eight years. Defendant in his answer denied the verbal agreement, and insisted on his right to offer the specially agreement in support of an action for his rights under it. The Court refused to restrain him from offering such evidence, holding that the question of fraud might be tried in that action, and that there was no evidence of the verbal agreement.*

This was a motion to continue an injunction after the defendant's answer was put in. The bill stated, among other things, that the defendant obtained a patent, dated the 20th of July, 1820, for improvements in the machinery of power-looms; and, by a deed bearing date the 1st of June, 1824, he agreed with the plaintiffs to grant to them the benefit of his invention, upon the terms therein stated. The agreement recited, that the defendant had made certain improvements in the machinery of power-looms—that he had obtained a patent for his invention, and had agreed to allow the plaintiffs the benefit thereof, in consideration of two guineas premium, independent of the price of each loom, and at a rent of 20s. per annum

<sup>1</sup> Russ. and Mylne, 1.

for some of the looms, and 10s. for others, during the time the looms were to be used. This agreement was carried into effect, looms were purchased at the premium mentioned, and the plaintiffs accounted, according to the terms of the agreement, from June, 1824, to Christmas, 1825. From 1825, the account was taken on an entirely different footing, and the validity of the patent was doubted, it being alleged, that the improvements were not the invention of the defendant, but had been discovered by other persons at a date anterior to the patent;—that the defendant was perfectly aware that his patent could not be supported, and that he had consequently abandoned his claim for premium and rent under the agreement. From Christmas, 1825, down to the beginning of 1834, no rent or premium in respect of the patent right was in fact paid, or in any way recognized by the plaintiffs. In 1834, the defendant brought an action for recovering those rents and premiums. A plea of no valid patent was put in to that action. The plea had been demurred to—the demurrer was disposed of in the Court of King's Bench, and allowed; and one object of the injunction was to restrain the plaintiff at law from using there the recitals in the agreement of 1824.

Mr. Bickersteth, Mr. Teed, and Mr. Bichner, in support of the motion, having stated these facts, argued that the defendant agreed to abandon his rights under the agreement of 1824, as the accounts taken subsequent to Christmas, 1825, would shew. His answer did not admit such agreement, but it says:—"In Christmas, 1825, I found that my right to the patent was in dispute, and I forbore any demand in respect of rights until I was in a situation to prove the validity of it." They submitted, that on this passage alone the injunction ought to be continued, at least until the defendant had proved the validity of his patent, namely, by a *scire facias*, or by the action. The defendant was now in a situation to have this question tried, but he interposed the specialty agreement as an estoppel, and held the plaintiffs in equity thereby estopped. The plaintiffs desired nothing more than that the validity of the patent should be tried; for they conceived that they could prove that all these alleged improvements were made prior to the date of the patent. The rights of the defendant under the agreement of June, 1824, ought not to be enforced against the plaintiffs until the validity of the patent was established. In this state of things, the defendant ought to be restrained from reading the recitals of the agreement in question in support of his case, and as an estoppel to the defendants.

Mr. Pemberton, Mr. K. Parker, and Mr. Wigram, against the motion. It has been argued, that the defendant agreed not to enforce his rights against the plaintiffs, until the validity of the patent was established. The first question in this view of the case is, whether any such agreement was established by the answer, and whether the bill sought the benefit of such an agreement? The bill was filed for a different purpose; prayed an entirely

different relief; and it was only because the plaintiff's whole ground was cut away by the answer, that it was now attempted to establish a totally different equity. The bill prayed that the deed might be cancelled, and that the defendants might be restrained from proceeding with an action against the plaintiffs; but if the Court should permit the defendant to proceed with his action, that he might be restrained from producing in support of his case the recitals of the agreement. The allegations in the bill were, that the plaintiff at law, knowing his patent to be invalid, fraudulently represented to the plaintiffs that he had valuable patent rights which he could enforce against all the world; and by that fraudulent representation he induced the plaintiffs to enter into the agreement; that the patent was bad, and that the deed ought to be set aside as fraudulent. The case came to this, whether, on the facts, these allegations could be supported? It was perfectly obvious, supposing that the case made out by the bill could be established, that nothing existed to prevent the plaintiffs from proving at law the deed to be fraudulent. But the plaintiffs had not gone into evidence to prove it fraudulent, they had only alleged it in their bill. If the deed had been fraudulently obtained, was this Court to say whether or not there was sufficient evidence of that fact? Was the Court to interfere with the Court of King's Bench, either before or after a trial, where no equitable grounds for that purpose exist? A Court of Equity never interfered with a Court of Common Law, on a purely legal question. *Eyre v. Everett*.\*

*The Master of the Rolls*.—There is no question here as to the validity of the original deed. The question is, whether there was any ground for the interposition of the Court, founded upon the alleged *parol* contract, which would discharge the agreement by specialty. For raising the question, whether the Court would interfere for such a purpose, two facts were necessary; first, to prove the *parol* agreement from the answer; and, secondly, to shew that the bill was filed for the purpose of carrying it into effect. That the alleged contract was alluded to in the bill could not be denied; yet he did not think that the bill was filed for the purpose of carrying it into effect. The case stood thus:—If the Court of King's Bench was incorrect in supposing the party stopped by the recital, the case was still open; but if that Court was correct in conceiving that the defendant was entitled to payment, the question was then, whether the answer admitted such an agreement as entitled the plaintiff to the interposition of this Court for the purpose of preventing the application of the specialty agreement, upon the supposition that the parties were not at liberty to raise the question of the validity of the patent, that the defendant at law had a right to enforce the payment, whether the patent was good or bad. The bill denied such contract, and denied the con-



sideration alleged to have been given for such contract, by which, as it was alleged, the defendant agreed to demand nothing more than the price of the looms; it being admitted that the defendant would not make any future demand, unless the validity of the patent was established. There was ~~no~~ contract in the case, there was ~~only~~ a mere voluntary undertaking ~~not~~ to enforce a legal right, and subsequently an incidental abandonment of that which the law gave him. Upon the question of contract, nothing had been shewn to induce a Court of Equity to interfere, and consequently the injunction must be discharged.

*Collinge and another v. Bowman*, at Westminster. Michaelmas Term, 1834.

### Common Pleas.

#### COSTS.—METROPOLITAN POLICE ACT.—ACQUITTED DEFENDANTS.

*A Judge at Nisi Prius cannot certify so as to deprive a defendant enjoying the protection of the Metropolitan Police Act of his costs.*

In this case an action of trespass had been brought against a number of defendants, some of whom were metropolitan police men. The latter were acquitted. The Chief Justice, who tried the cause, certified at the trial, under the 3 & 4 W. 4, c. 42, s. 32, to deprive the defendants of their costs, on the ground of a probable cause existing for making the acquitted defendants parties to the cause.

An application was now made to give the defendants their costs, as between attorneys and clients, pursuant to 10 G. 4, c. 44, s. 41, the Metropolitan Police Act; the provisions of that act entitled a defendant to his costs, as between attorney and client, when he succeeded in an action brought against him for something done in pursuance of the authorities conferred by the act. The question was, whether the 3 & 4 W. 4, c. 42, repealed the 10 G. 4, c. 44, so far as the defendants were concerned. It was contended, that the legislature never contemplated making any alteration in the 10 G. 4, c. 44, the object of which was, to throw protection round the police in the performance of very anxious and difficult duties. The intention and object of the act for the amendment of the law, was to supply defects in the 8 & 9 W. 3, c. 11, s. 1, with respect to the rights of defendants to costs.

The Court granted a rule *nisi*.

On shewing cause against this rule, it was contended, that since the passing of the Law Amendment Act, the persons standing in the situation of police officers must be regarded in the same light as all other persons; and therefore, a Judge must have the same power with respect to the certificate to deprive the defendant of costs.

The Court was of opinion, that the intention of the legislature was merely to supply the deficiency alluded to in argument, and not to

deprive persons under the protection of the 10 G. 4, c. 44, of their claim to costs.

Rule discharged.—*Humphrey v. Woodhouse and others*, H. T. 1836. C. P.

#### SET-OFF OF COSTS AND DAMAGES.—ATTORNEY'S LIEN.—RIGHTS OF PARTIES.

*Where there are several defendants, and some succeed and some do not, the unsuccessful ones may set off the costs due to the successful one.*

In this case, which was an action for an irregular distress, against three defendants, the plaintiff obtained a verdict against one, and the other two defendants had verdicts in their favor. An application was made to set off the costs owing to the successful defendants, against those owing by the unsuccessful one. A rule *nisi* having been obtained for this purpose—

Cause was shewn against it. It was contended, that the application ought not to be granted, as it was, in fact, to the prejudice of the plaintiff's attorney's lien, and therefore, in direct contravention of 1 Reg. Gen. H. T. 2 W. 4, s. 93, which prohibited any set-off of costs to the prejudice of the attorney's lien.

In support of the rule, it was submitted, that the set off of costs here sought to be effected, was not within the meaning of the rule now referred to. That rule only applied to cases where one party endeavoured to set off costs due to himself, against costs due from himself. Here, however, the application was to set off costs due to successful defendants, against costs due from an unsuccessful defendant. The cases, therefore, were quite different.

The Court was of opinion, that the rule in question only applied to cases of setting off costs between adverse parties, and therefore, that the set-off prayed, might be allowed.

Rule absolute.—*George v. Elston and others*, H. T. 1835. C. P.

#### AMENDING WRIT OF SUMMONS.—INDORSEMENT OF PROCESS.—WRIT OF TRIAL.

*Where a plaintiff has indorsed his writ of summons, with a demand for more than 20l., he cannot afterwards obtain a Judge's order to amend the indorsement by reducing it below that sum, in order to try the cause before the sheriff.*

In this case the plaintiff had issued a summons indorsed with a demand of 25l. After declaring, he obtained a Judge's order to reduce the amount to 15l. A rule *nisi* was then obtained on the part of the defendant, to discharge that order, on the ground that the Judge had no jurisdiction to make such an order.

Cause was afterwards shewn against this rule.

The Court was of opinion, that the Judge had no such authority, and therefore, made the

rule absolute for rescinding the order, remarking at the same time, that it would be most unfair to allow a plaintiff to proceed in a superior Court for a greater sum than 20*l.*, for the purpose of obtaining full costs, and then to reduce his claim to the latter sum, when he found the defendant resisted the action.

Rule absolute.—*Trotter v. Buss*, H. T. 1835. C. P.

### Exchequer of Pleas.

#### JUDGMENT ON AN OLD WARRANT OF ATTORNEY.—ENTITLING AFFIDAVIT.

*Where an affidavit to enter up judgment on a warrant of attorney, need not be entitled in a cause.*

This was an application to enter up judgment on a warrant of attorney, given at a time when no cause was depending in Court. The affidavit in support of the application was not entitled in any cause.

*Gurney, B.*, after consulting with the Master, was of opinion, that under these circumstances it was unnecessary to have it entitled, in order to make the application.

Rule granted.—*Haward v. Stanbury*, H. T. 1835. Excheq.

## NOTES OF THE WEEK.

### HOUSE OF LORDS.

#### Bills for second Reading.

##### Title of the Bill.

##### Proposer.

Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Ecclesiastical Jurisdiction.	Lord Brougham.

#### In Committee.

Contempts in Equity (Ireland).	The Ld. Chancellor.
Infants' Property (Ireland).	The Ld. Chancellor.

#### Third Reading.

Oaths Abolition.	Duke of Richmond.
<i>Passed.</i>	

Chester Criminals Execution.

### HOUSE OF COMMONS.

#### Bills to be brought in.

Law of Tenure.	Sir J. Campbell.
Law of Escheat.	Sir J. Campbell.
Prisoners' Defence.	Mr. Ewart.
Registration of Births, &c.	Mr. Wilks.

### Highways.

Mr. Lefevre.

#### Second Reading.

Bankruptcy Funds.	Master of the Rolls.
Registration of Voters.	Lord J. Russell.
Abolishing Imprisonment for Debt, &c.	Sir J. Campbell.
Law of Libel.	Mr. O'Connell.
Poor Law Amendment.	Mr. Trevor.
Ecclesiastical Courts.	Attorney General.
Clergy Discipline.	Attorney General.
Dissenters' Marriages.	Chancellor of Exch.

#### In Committee.

Copyholds Enfranchisement.	Sir J. Campbell.
Illegal Securities.	Mr. Rolfe.

#### Consideration of Report.

Execution of Wills.	Sir J. Campbell.
Law of Executors, &c.	Sir J. Campbell.

### IMPRISONMENT FOR DEBT.

This bill has been read a second time, and committed to Sir John Campbell, Mr. Attorney General, Mr. Solicitor General, Mr. Aglionby, Mr. Blamire, Mr. Brodie, Mr. Brotherton, Mr. Charles Buller, Mr. Bonham Carter, Mr. Carruthers, Mr. Clay, Mr. Cripps, Mr. Divett, Mr. Ewart, Mr. Cutlar Ferguson, Mr. Finn, Mr. Fleetwood, Mr. Freshfield, Sir James Graham, Sir George Grey, Mr. Grote, Mr. Hawes, Mr. Hogg, Dr. Lushington, Mr. Lynch, Lord Viscount Morpeth, Mr. Murray, Mr. O'Connell, Mr. O'Dwyer, Mr. O'Loghlen, Mr. William Henry Ord, Mr. Pemberton, Mr. Poulter, Mr. Serjeant Perrin, Mr. Pryme, Sir Matthew White Ridley, Mr. Richards, Mr. Roebuck, Mr. Rolfe, Mr. Frederick Shaw, Mr. Sheil, Mr. John Abel Smith, Mr. Serjeant Talfourd, Mr. Tancred, Mr. Tooke, Mr. Warburton, Mr. Serjeant Jackson, Mr. Hardy, Lord Francis Egerton, Lord James Stuart, Mr. Lefroy, Colonel Perceval, Mr. Humphery, Mr. Bernal, Mr. Jones Parry, Mr. Alderman Copeland, Mr. Mark Philips, Mr. Fox Maule, Lord Dalmeny, Mr. Baring, Mr. Richards, Mr. Bundle; five to be a quorum.

## ANSWERS TO QUERIES.

### Property and Conveyancing

JOINT TENANCY.—WIFE.—ADMINISTRATION.  
P. 383.

Assuming that there was nothing but the

simple fact of the marriages of *B.* and *C.* to rely on for severing the joint-tenancy, I think they would not have that effect. *Co. Litt.* 185, b. Coke's remark, that it would be otherwise with chattels personal, can apply only to chattels in possession, which the husband upon marriage becomes absolutely entitled to *jura mariti*. And see also the two cases of *May v. Hook*, 1 Inst. 246 a, n. 1; and *Eustace v. Seawen*, Cro. Jac. 696; in the one of which marriage articles were relied upon as severing the joint-tenancy; and in the other, a conveyance by the husband and wife; but in neither does it seem to have been suggested by any of the parties that the marriages alone would have that effect. I consider, therefore, that *C.* was entitled by survivorship to both the shares in question. With respect to the second question, whether *C.* is entitled to his wife's interest in the shares without administration, I think he becomes so by the mere fact of survivorship; that is to say, *beneficially*, though not legally; though the persons alone entitled to take out letters of administration *de bonis non*, are the children of *C.* as next of kin of the wife. They will, however, be considered as trustees for the representatives of the husband. *Squib v. Wyn*, 1 P. W. 378; *Humphrey v. Bullen*, 1 Atk. 458; *Elliot v. Collier*, 3 Atk. 527. The fourth question is answered by what I have already said.

(1)

## ACCOMMODATION BILL. P. 240.

The assignees cannot prove. *Cowley v. Dunlop*, 7 T. R. 565; 1 Mont. 148 n. J.

REAL PROPERTY.—REMAINDER.—ISSUE.  
P. 256.

*A. B.* has merely a life estate in the premises, and the children will not be entitled to any estate until the death of *A. B.*, as he may marry again, and have a second family, who would be equally entitled. Vide *Bartolman v. Murchison*, 3 Russ. & M. 136; 6 Leg. Obs. 472. J.

## QUERIES.

## Common Law.

## EJECTMENT.—INFERIOR COURT.

An action of ejectment was brought against *B.*, the tenant of *A.*, in an inferior court; an ap-

pearance and plea was filed in the tenant's name, the inferior court having no authority to make the parties enter into the consent rule: the plaintiff obtains a verdict. Will the tenant, who has not been indemnified, be compellable to pay the costs of the ejectment? or is not the landlord liable? or how must the plaintiff proceed to recover his costs, as the inferior court has no authority to grant an attachment? J.

## SAVINGS BANK.—LETTERS OF ADMINISTRATION.

*A.* at the birth of a son, deposits 50*l.* in the Savings Bank in the name of his son, to accumulate during the minority of such child—the child dies when 10 years old. Would the bank be justified in paying the money to *A.*, without his taking out letters of administration to the effects of such deceased child? J.

## THE EDITOR'S LETTER BOX.

The suggestion of *C.* cannot be adopted. The matter he refers to does not occupy much space, and we believe that the larger part of our readers would not approve of its omission. We thank him for the report of a case in the Bail Court. Any observations on practical points will be acceptable; but for the reports, we must rely on the arrangements we have already made.

The Queries and Answers of H. P.; W. J. T.; W. T.; H. J. T.; C.; J. O.; "Ambler;" M. T.; F. G.; N. I.; L. M., and D. B. J., have been received.

The Letters of "Adviser," and several from "Subscribers," will appear as early as practicable.

The suggestions of D. H. shall receive our best consideration, and part of them will probably be adopted. We are particularly obliged for his friendly hints.

The letter of A. B., shall be inserted next week.

The Letters of "A Constant Subscriber," and "A Casual Ejector," shall receive early attention.

The Paper on the Law of Arrest is acceptable. This subject will be fully treated of in the next Number.

# The Legal Observer.

Vol. IX.

SATURDAY, MARCH 28, 1835.

No. CCLX.

— "Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.

HORAT.

## OF THE PARTIES TO ACTIONS.

### DEFENDANTS.

In a former number we gave the rules respecting the proper parties to be made plaintiffs:<sup>a</sup> we now propose to give the corresponding rules respecting defendants, and to shew, as to the rules in either case, how their infraction can be taken advantage of.

In actions on contracts, whether express or implied, all the co-contractors, excepting any that have been bankrupt, should be made defendants; and even a bankrupt co-contractor must formerly have been made a co-defendant;<sup>b</sup> but now the bankruptcy is a sufficient answer to such a plea in abatement.<sup>c</sup> If any of the co-contractors are dead, the survivors, without the personal representatives of the deceased, should be made defendants: and where all are dead, the representatives of him who died last are the proper parties to be made defendants: and in no case can the personal representatives of those who died previously be made defendants. Only those who were parties to the contract, or their representatives, should be made defendants; and it is fatal to make too many defendants: thus, where three were sued as joint acceptors upon an acceptance which was fraudulent as to one of them, and which therefore was the acceptance of only two of the defendants, the action was held not maintainable;<sup>d</sup> though, in an action for a tort, the rule is different,<sup>e</sup>

because, it is said, torts are in their nature several; that is, the very tort declared upon is considered as substantially proved, though not proved against all the defendants; whereas if a contract, described as the joint contract of three, was the contract of only two, the contract described is considered as not proved, or, in other words, such a misdescription is considered essential, and the proof is held not to apply to the contract declared upon. A similar case to the last is that of two partners sued on a guarantie given by one of them in the name of the firm; there, the other partner not having authorized the guarantie, and one partner having no implied authority to make a contract of this kind, it was held that the action was not maintainable,<sup>f</sup> because there were too many defendants.

Dormant partners need not be made, though the plaintiff is entitled to make them, co-defendants. In an action for goods sold and delivered, it was pleaded in abatement, that the promise was made by one *A. B.* jointly with the defendant: *A. B.* and the defendant were partners; the goods were purchased for the joint account, and were sent to the place where the joint trade was carried on, but the plaintiff did not know of *A. B.*, and he trusted the defendant solely: on this evidence Lord *Tenterden* directed the jury to find for the plaintiff, if they thought the sale was intended to be to the defendant solely.<sup>g</sup> In *Saunders v. De Mautort*,<sup>h</sup> the defendants were sued as the acceptors of a bill drawn upon them at the Mauritius, under the style of Saunders,

<sup>a</sup> *Ante*, p. 339.

<sup>b</sup> *Bovill v. Wood*, 2 M. & S. 23.

<sup>c</sup> 3 & 4 W. 4, c. 42, s. 9.

<sup>d</sup> *Sheriff v. Wilks*, 1 East, 48.

<sup>e</sup> *Hardyman v. Whitaker*, 2 East, 572, n.

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<sup>f</sup> *Lowndes v. Duncan*, 3 Camp. N. P. C. 478.

<sup>g</sup> *Mullett v. Hook*, 1 M. & M. N. P. C. 88.

<sup>h</sup> 1 B. & Adol. 398.

Brothers, & Co. London: the defendants pleaded in abatement the non-joinder of certain persons who were proved to be their partners, carrying on a branch of the business at the Mauritius. Lord *Tenterden* told the jury that the partnership was clearly established, though it did not appear to be known to any person at the Mauritius; that the question for them was, whether the holder of the bill might reasonably have supposed that the defendants alone constituted the house of Saunders, Brothers, & Co., and that if he had reasonable ground so to think, then he must be taken to have contracted with them alone, and that the verdict ought to be for the plaintiff: but if they thought that any circumstance, such as the addition of the words "and Co.," ought to have induced him to think that there were other partners, then the verdict should be for the defendants: and the Court afterwards held that this was a proper mode to leave the case to the jury; thereby overruling the case of *Dubois v. Luder*,<sup>1</sup> in which the Court of Common Pleas had held that the non-joinder of a dormant partner as a defendant might be pleaded in abatement.

In contracts entered into through the medium of an agent, the question arises, which of the two, the principal or the agent, shall be made defendant. If *A.*, being only an agent, but not avowing himself as such, and not being known as such, purchases in his own name, he of course is liable, because the credit is given entirely to him. If also the seller, knowing who the principal is, elects to trust the agent, the agent in that case also is liable;<sup>2</sup> but there is this difference between the two cases, that in the first the seller on discovering that the purchaser was only an

agent may charge the principal, unless the principal has settled with or paid the agent. There is a third case, where at the time of the sale the seller is not informed for whom the purchase is made, but knows it is made only by an agent: in that case also the agent is liable in the first instance; but the seller, upon discovering who the purchaser is, may elect to charge him, and drop his demand against the agent.<sup>3</sup>

It sometimes happens upon written agreements, that the agent makes himself personally liable, manifestly intending all the while to bind his principal. An agent signing an agreement, should sign by procuration, if he means to make his principal, and not himself, the party to the transaction; and not he, but his principal, should be named in the part of the instrument which describes the parties to the agreement. Where an agreement ran thus;—"A. B. on behalf of C. D. of the one part," and A. B. signed his own name, A. B. and not C. D. was held liable.<sup>4</sup> So, where solicitors gave an undertaking in this form;—"We, as solicitors to the assignees, &c. undertake," &c. and signed their own names, they were held personally liable.<sup>5</sup> Where also the known agent of Lord Rokeby entered into articles of agreement under seal, describing himself as "A. B., for and on the part and behalf of Lord Rokeby," of the one part, and executed the deed himself, he was held personally liable.<sup>6</sup>

In suing on a contract made with a feme sole who has since married, the action must be brought, not against her alone, nor against her husband alone, but both must be made defendants. Thus, where a husband was sued by a surgeon for a bill contracted by his wife before her marriage, and the plaintiff obtained a verdict, judgment, notwithstanding, was given for the defendant, on the ground that the wife ought to have been made a co-defendant.<sup>7</sup>

Marriage, by operation of law, incapacitates a woman to contract on her own account; and therefore she is not liable on any contract made by her during the life of her husband, not even though she has traded as a feme sole with her husband's consent, according to the custom of London:<sup>8</sup> and

<sup>1</sup> 5 Taunt. 609. Lord *Eldon*, with reference to this case, said, "This is new to me, and contrary to the course in bankruptcy for thirty years: here, it has been taken as unquestionable, that if I deal with *A.*, he cannot with reference to that transaction say, there is a contract between him and *B.* of whom I know nothing, thus compelling me to be a joint creditor of those two, whose joint property may be scarcely any thing, and not the sole creditor of the only man I know. I have held in this place, following a series of precedents, that a man selling to *A.*, not knowing of any partner, may consider *A.* as the sole purchaser: if, however, he finds that *B.* has taken a share of the property, he may elect to go against him also, but he cannot be compelled to do so." *Ex parte Norfolk*, 19 Ves. 455.

<sup>2</sup> *Patteson v. Gundassagui*, 15 East, 61.

<sup>3</sup> *Thomson v. Devonport*, 9 B. & C. 90.

<sup>4</sup> *Norton v. Herron*, 1 Ry. & M. N. P. C. 229.

<sup>5</sup> *Burrell v. Jones*, 3 B. & A. 47; *Iveson v. Conington*, 1 B. & C. 160.

<sup>6</sup> *Appleton v. Binks*, 5 East, 147.

<sup>7</sup> *Mitcheson v. Hewson*, 7 T. R. 348.

<sup>8</sup> *Beard and wife v. Webb*, (in error) 3 Bos. & P. 93.

therefore on the contract of a married woman no action at all will lie, unless it will lie against the husband; and against him it will lie only when he has either authorized or affirmed the contract, or the circumstances under which it was made are such that the law makes it binding on him;—as, where necessaries have been supplied to his wife whilst *justifiably* living apart from him;—as, when having separated, perhaps unjustifiably, the husband afterwards refuses to take her back, except upon conditions which he has no right to impose,—the condition, for example, of her giving up property settled upon her;<sup>1</sup>—or when she has left him under a reasonable apprehension of personal violence;<sup>2</sup> or where he has taken into his house another woman.<sup>3</sup> *Prima facie*, however, the husband is not liable if the wife lives apart from him; and therefore the plaintiff, in such a case, must be prepared with evidence of the circumstances or cause of the separation.<sup>4</sup>

It may happen, that neither the husband nor the wife is legally liable; the wife not, on the general principle that no action on a contract made during coverture will lie against a married woman; and the husband not, if the credit was given to the wife and not to the husband; as in the case of *Bentley v. Griffin*,<sup>5</sup> which was an action for

the price of millinery clandestinely purchased by the defendant's wife whilst living with him; and on the ground of the secrecy of the purchase, and of the wife's having ordered the goods not to be sent home whilst her husband was at home, it was held that the credit was given to the wife and not to the husband, and that therefore the husband was not liable. A person trusting a married woman thus, trusts her honour, and is without any right of action.

Next, as to the mode of taking advantage of the *nonjoinder* and *misjoinder*,—the making too many or too few, either plaintiffs or defendants. The new rules of pleading having varied the scope of the several pleas of the general issue, the present is a new question, and our readers will take our observations upon it as private opinions. It will clear the subject of some of its difficulty to bear in mind, that whenever a special plea was necessary under the former practice, no alteration is effected by the new rules of pleading. Wherever also misjoinder or nonjoinder might be taken advantage of by demurrer, in arrest of judgment, or by writ of error, that advantage remains. It seems also that where a nonjoinder or misjoinder could formerly be given in evidence upon the old general issues, it may still be given in evidence under them except where by the express words of the rules they are so narrowed as to exclude that objection.

Now, 1. Nonjoinder of parties who ought to have been made *co-defendants*, could, before the new rules, only be taken advantage of, and therefore can still only be taken advantage of, by a plea in abatement,<sup>a</sup> unless the fact appeared on the declaration or subsequent pleadings, and also that the parties omitted were living, in which case the nonjoinder of defendants was, and we conceive still is, a ground for demurrer,<sup>b</sup> writ of error, or arrest of judgment.

2. As to the *misjoinder of defendants*, that is, making too many defendants, or adding improper parties as defendants:—In *actions of tort*, it should be recollected that a misjoinder of defendants goes not at all, either by plea or otherwise, in abatement of the action; and that it goes in bar only for the innocent defendants; and as “not guilty,”

wife, and that the husband is liable for no part of these goods.” *Bentley v. Griffin*, 5 Taunt. 356.

<sup>a</sup> *Whelpdale's case*, 5 Rep. 119; *Rice v. Shute*, 5 Burr. 2611; *Boson v. Sanford*, Carth. 62, 63; *Powell v. Layton*, 2 Bos. & Pul. N.R. 365.

<sup>b</sup> *Hickmot's case*, 9 Rep. 526; *Cabell v. Faughan*, 1 Saund. 291 b. n (4) *et seq.*

<sup>1</sup> *Reed v. Moore*, 5 Car. & P. 200.

<sup>2</sup> *Houlston v. Smyth*, 2 Car. & P. 28.

<sup>3</sup> *Aldis v. Chapman*, Sel. N. P. 262.

<sup>4</sup> *Per Lord Tenterden*.—“If goods are supplied to a married woman who is living with her husband, it must be taken *prima facie* that those goods were supplied by his authority, and it lies on him to shew that the goods were supplied under such circumstances as make him not liable to pay for them. But if a married woman be living separate and apart from her husband, it is the duty of a tradesman to inquire under what circumstances the separation took place, before he part with his goods; and if he do part with his goods to a woman living apart from her husband, the *onus* lies on him to prove that the separation took place under such circumstances as will entitle him to recover the price from the husband.” *Clifford v. Laton*, 3 Car. & P. 15; S. C. 1 M. & M. 101. See also *Mainwaring v. Leslie*, 1 M. & M. 18, where, in an action for goods supplied to a married woman living separate from the defendant, her husband, *Abbott*, C. J. nonsuited the plaintiff, because no evidence was given of the circumstances or cause of the separation.

<sup>5</sup> 5 Taunt. 356. *Per Dallas J.*—“The question is, whether the general liability of the husband is not repelled by the circumstances which shew that the credit was given to the wife. I think most clearly the credit was given to the

though narrowed in other respects, obviously involves the question of the guilt of each of the defendants, it is still the proper plea when, in such actions, too many, or others besides the guilty parties, are made defendants. In actions of *contract*, the rule depends on a different consideration. If two defendants sued together as upon a *joint* contract or obligation, say, "We have not contracted a joint obligation, but one of us only is liable," the allegation is not in confession and avoidance, but strictly a denial of the contract or obligation in manner and form as alleged; and therefore *non assumpsit*, and "never indebted," as it seems to us, even narrowed as those pleas are, are the proper pleas for this objection; and we should say also, *non est factum*, where the action is on a deed, though perhaps this is doubtful; for the rule says "*non est factum* shall operate as a denial of the execution of the deed only;" and if A., one of the defendants, executed it, how could he deny his execution, though the deed was not executed by B., who was misjoined with him;—yet surely if the deed is described as the joint deed of two, proof that it was in fact executed by one, cannot be intended to be admissible so as to support a verdict against either or both under an issue, the fair construction of which is, whether the two executed; for if the two did not execute, the true obligation is not declared upon: if, however, both executed, and the defence is that it is void as to one, and therefore not a good cause of a *joint* action, this defence would not be admissible under *non est factum*, because by the very supposition there was in fact a *joint* execution, and such a defence must be pleaded specially.

8. As to the nonjoinder of parties who have a joint interest with the plaintiffs; this, in actions of *tort*, could only be taken advantage of before the new rules by a plea in abatement;<sup>2</sup> and therefore, in such actions, can still be taken advantage of only by a plea in abatement; but in actions on contracts and obligations, if the contract was with others as well as the plaintiff, evidence to that effect was held to establish a material variance;<sup>7</sup> it disproved the contract alleged, by proving it to be materially different; it was therefore evidence in denial of the contract alleged; such being the nature of the objection, the proper pleas still for the purpose of taking it are *non assumpsit*, "never indebted," *non est factum*.

4. As to *misjoinder*, or the making too

many plaintiffs, proof to that effect is held to establish a material variance; like proof of nonjoinder, it disproves the contract or obligation alleged, by proving it to be materially different;<sup>8</sup> it is therefore evidence in denial of the contract alleged, and such being the nature of this objection, the proper pleas are *non assumpsit*, "never indebted," and *non est factum*. In actions of *tort*, misjoinder is equally fatal; it shews that the plaintiffs have not a joint interest or joint right of action; "not guilty," however, is no longer the proper plea for this objection, for by the new rules, "not guilty" is a mere assertion of the innocence of the defendant, and therefore the fact or allegation on which the plaintiffs put their joint right must be denied; as if the action is trespass to property, the defendant must plead that they were not possessed at the said time when, &c. in manner and form, &c.; and in the same manner in other actions, the fact must be denied on which depends the right to maintain a joint action. This fact always appears either expressly or by necessary implication in the declaration. Here we must close, in consequence of the necessary limits of this publication; but we think our readers will derive great practical assistance from an attention to the above observations.

## ENFRANCHISEMENT OF COPYHOLDS.

[Continued from page 409.]

THE clauses of this bill, as printed in our last number, comprised the powers of enfranchising, (though of a very restricted nature) and the provisions regarding the consideration to be given for the enfranchisement. The remainder of the bill relates to incumbrances on copyholds—the tenure on which the enfranchised property shall be held—procuring the consent of the several parties interested—provisions in the case of infants and lunatics—the investment of the consideration money—the parties to the assurance—provisions for existing trusts and leases—and the limitation of copyholds in future.

### Incumbrances.

17. That a person shall, for the purposes of this act, be considered as seized, or possessed of, or entitled to, in his own right, any manor, lands of any tenure or apportioned annual

<sup>2</sup> *Cubell v. Vaughan, ubi supra.*

<sup>7</sup> *Idem.*

<sup>8</sup> *Idem.*

rent, notwithstanding he shall be so seised, possessed, or entitled, subject to any mortgage, charge, or incumbrance, affecting such manor, lands, or apportioned annual rent, or his estate only therein, and whether such manor, lands, or apportioned annual rent, or his estate therein, shall have been so mortgaged, charged, or incumbered, either by himself or by any other person, and notwithstanding the whole of the rents and profits of such manor or lands, or the whole of such apportioned annual rent (as the case may be) or of his estate therein respectively, shall be exhausted or required for the payment of the mortgage, charge, or incumbrance affecting such manor, lands, or apportioned annual rent, or his estate therein respectively, and of the interest thereon.

*Tenure of Enfranchised Lands.*

18. That the lands which shall be enfranchised under this act shall, from and after the enfranchisement thereof, be held of the lord of the manor of which such lands were parcel at the time of such enfranchisement, in free and common socage, under and subject to such rents and heriots as would have been respectively payable to and demandable by the lord of such manor in respect of such lands, if such enfranchisement had not been made; and the person for the time being, seised or possessed of or entitled to the lands so enfranchised shall, from and after such enfranchisement, have and be entitled to in respect of and as annexed and appurtenant to such lands all such rights of common and other rights, liberties, and privileges in or upon the commons or waste grounds, parcel of such manor, as such persons would have been entitled to in respect of and annexed and appurtenant to such lands, in case the same had not been so enfranchised.

*Consent to Enfranchisement.*

19. That if at the time when it is proposed to make, under this act, any enfranchisement of lands, or any apportionment of an apportioned annual rent, or any release of an apportioned annual rent, the particular estate of the person for the time being to make such enfranchisement, apportionment, or release, under this act, and in respect of which it is proposed to make the same, shall be subject to any estate for years (not being a mortgage or satisfied term of years attendant on the inheritance, and not being an estate vested in any person as a mere lessee or assignee of any lease), or shall be subject to any mortgage or charge; then every such enfranchisement, apportionment, and release shall be made with the consent of the person for the time being, possessed of or entitled to such estate for years, mortgage or charge.

20. That if at the time when it is proposed, in consideration of any enfranchisement under this act, to convey any lands, or to grant any annual rent, or to charge the lands enfranchised with any gross sum of money; or if at the time when it is proposed, to make any apportionment under this act of an apportioned annual rent; or if at the time when it is proposed, in

consideration of the release under this act, from an apportioned annual rent of the lands enfranchised, in consideration of an annual rent, to convey any of the lands so enfranchised, the particular estate of the person for the time being to make such conveyance, grant, or charge, or to concur in such apportionment, and in respect of which it is proposed respectively to make or concur in the same, shall be subject to any estate for years (not being a mortgage or a satisfied term attendant on the inheritance, and not being an estate vested in any person as a mere lessee or assignee of any lease), or shall be subject to any mortgage or charge, then every such conveyance, grant, charge, or apportionment shall be made with the consent of the person for the time being, possessed of or entitled to such estate for years, mortgage or charge.

21. That if the person to make any enfranchisement, conveyance, grant, release, or charge, or to make or concur in any apportionment under this act, shall be an archbishop or bishop, then such enfranchisement, conveyance, grant, release, charge, or apportionment shall be made with the consent of the dean and chapter of the cathedral church which shall be locally situate within the diocese of such archbishop or bishop.

22. That if the person to make any enfranchisement, conveyance, grant, release, or charge, or to make or concur in any apportionment under this act, shall be a dean of any cathedral church, or a dean and chapter of any cathedral church, or the prebendary of any prebend founded in any cathedral church; or the vicars of any cathedral church; then such enfranchisement, conveyance, grant, release, charge or apportionment shall be made with the consent of the bishop of the diocese within which such cathedral church shall be locally situate.

23. That if the person to make any enfranchisement, conveyance, grant, release, or charge, or to make or concur in any apportionment under this act, shall be a parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy, or parochial chapelry (not being the vicars of any cathedral church); then such enfranchisement, conveyance, grant, release, charge, or apportionment shall be made with the consent of the patron of such benefice, perpetual curacy, or parochial chapelry, and of the bishop of the diocese within which the same is locally situate.

24. That if at the time when it is proposed to convey under this act, any lands in consideration of the enfranchisement of any lands, or to convey in consideration of the release from an apportioned annual rent any lands enfranchised under this act, such lands shall be held together with other hereditaments under any lease at one entire pecuniary rent, and the person empowered by this act to make such conveyance shall be entitled either at law or in equity to the rent reserved and made payable in such lease or any part thereof; then no such conveyance shall be made without the



consent of the lessee under such lease, his executors, administrators, or assigns.

25. That if at any time when it is proposed to convey under this act any lands in consideration of the enfranchisement of any lands, or to convey, in consideration of the release from an apportioned annual rent, any lands enfranchised under this act, such lands shall be held, together with other hereditaments, under any lease at one entire pecuniary rent, and the person empowered by this act to make such conveyance shall be entitled, either in law or in equity, to the rent reserved and made payable in such lease, or any part thereof, then it shall be lawful for the person empowered by this act to make such conveyance, to concur with the lessee under such lease, his executors, administrators, or assigns, and with the person to whom such conveyance shall be made in dividing and apportioning the rent reserved by such lease, and fixing and determining what part of such rent shall be thenceforth charged on and issuing out of such lands, and the part so fixed and determined on shall be accordingly charged on and issuing out of such lands, and the residue of such rent shall be thenceforth payable and issuing out of the other hereditaments comprised in such lease.

26. That if at the time when it is proposed under this act to grant any annual rent, or to charge any lands proposed to be enfranchised under this act with any gross sum of money, or to charge any lands enfranchised under this act and proposed to be released from an apportioned annual rent with any gross sum of money, the lands proposed to be charged with such annual rent or gross sum of money shall be held under any lease, and the reversion expectant on the determination of such lease shall be vested in the person empowered by this act to grant such annual rent or charge with such gross sum of money, and no pecuniary rent shall be reserved and made payable in such lease, or the net pecuniary rent (if any) reserved under such lease and payable to the person empowered by this act to grant such annual rent or charge with such gross sum of money, shall be less in amount than the annual rent proposed to be granted, or the interest on the gross sum proposed to be charged under this act; then no such grant or charge shall be made without the consent of the lessee under such lease, his executors, administrators, or assigns.

#### *Infants—Lunatics.*

27. That if at the time when it is proposed to make under this act any enfranchisement of lands, or any apportionment of an apportioned annual rent, or any release from an apportioned annual rent, the person empowered by this act to enfranchise such lands or to apportion such apportioned annual rent, or to release from such apportioned annual rent, shall be a minor, idiot, or lunatic, then the guardian of such minor, or the committee of the estate of such idiot or lunatic (as the case may be), shall for the purposes of this act be substituted in the place of the person empowered by this

act to enfranchise such lands or to apportion such apportioned annual rent, or to release from such apportioned annual rent; and all acts, deeds, matters, and things empowered by this act to be done and executed for the purpose of enfranchising such lands, or apportioning such apportioned annual rent, or releasing from such apportioned annual rent, shall be done and executed by the guardian of such minor, or the committee of such idiot or lunatic (as the case may be).

28. That if at the time when it is proposed, in consideration of the enfranchisement of any lands, to make under this act any conveyance of lands, or any grant of an annual rent, or any charge of any gross sum of money on the lands proposed to be enfranchised, or if at the time when it is proposed, in consideration of the release from any apportioned annual rent, to make under this act a conveyance of any lands so enfranchised, or if at the time when it is proposed to apportion any apportioned annual rent, the person empowered by this act to obtain such enfranchisement or release, or to concur in such apportionment, shall be a minor, idiot, or lunatic, then the guardian of such minor, or the committee of the estate of such idiot or lunatic (as the case may be), shall for the purposes of this act be substituted in the place of the person empowered by this act to obtain such enfranchisement or release, or require and agree to such apportionment; and all acts, deeds, matters, and things empowered by this act to be done and executed for the purpose of making the conveyance, grant, or charge to be respectively made in consideration either wholly or in part of such enfranchisement or release, or for the purpose of concurring in such apportionment, shall be made and executed by the guardian of such minor, or the committee of such idiot or lunatic (as the case may be).

#### *Investing Consideration.*

29. That if the consideration for any enfranchisement under this act, or for any release under this act from an apportioned annual rent, shall be either wholly or in part a gross sum of money, and the person to make such enfranchisement or release shall be seised, or possessed of, or entitled to, for a particular estate, the manor of which the lands proposed to be enfranchised shall be parcel, or the apportioned annual rent proposed to be released, but shall not be a spiritual corporation, either aggregate or sole, then the sum to be paid, either wholly or in part, as the consideration for such enfranchisement or release, shall be paid to two or more trustees to be nominated and appointed by two barristers-at-law, each of whom shall be of at least seven years' standing at the bar; and when and so often as, in consequence of any of the trustees so to be appointed as aforesaid, or to be appointed as hereinafter directed, dying or declining to act in the trusts hereby in them reposed, there shall not be at least two persons who shall be trustees willing and capable to act in the said trusts, then and in every such case, and immediately thereupon, the

surviving or continuing trustee, or the last continuing trustees or trustee, or the executors or administrators of the last surviving or continuing trustee, shall, and he and they is and are hereby required to appoint any person or persons to be a new trustee or new trustees to act in the said trusts, but so nevertheless that there shall at all times be at least two trustees to act in the said trusts; and upon every such appointment of new trustees, the sum which shall have been received as such consideration as aforesaid, and the stocks, funds, and securities in which the same shall for the time being be invested in pursuance of this act, or so much thereof respectively as shall not have been applied or disposed of pursuant to the directions of this act, shall be paid, assigned, and transferred so as to be vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustee or trustees, as occasion shall require.

30. That if the consideration for any enfranchisement under this act, or for any release under this act from an apportioned annual rent, shall be either wholly or in part a gross sum of money, and the person to make such enfranchisement or release shall be a spiritual corporation either aggregate or sole, then the sum to be paid either wholly or in part as the consideration for such enfranchisement or release, shall be paid to the governors, authorized or appointed to regulate and superintend the bounty given by her late Majesty Queen Anne for the augmentation of the maintenance of the poor clergy.

31. That the receipts of the persons to whom any gross sum of money shall be paid pursuant to this act, shall be sufficient discharges for the same, and the person paying such gross sum of money shall not be liable to see to the application of such sum, or be liable for the misapplication or non-application thereof.

32. That the persons to whom any gross sum of money, being the consideration either wholly or in part for the enfranchisement of any lands, or for the release from any apportioned annual rent, shall be paid in pursuance of the directions of this act, or the persons appointed under this act in their stead, shall apply the same in or towards the payment or discharge of any mortgage, charge, lien, or incumbrance, which shall affect the manor of which the lands enfranchised shall be parcel, or any undivided share thereof, or any hereditaments which shall be then subject to the same uses as such manor or undivided share thereof, or as the case may be, which shall affect the apportioned annual rent released, or any hereditaments which shall be subject to the same uses as such apportioned annual rent, or in the purchase of other hereditaments of an indefeasible estate of inheritance in fee simple, in possession or subject only to any lease at rack-rent; and the hereditaments so to be purchased, shall be settled to, for and upon such and the like uses, trusts, intents, and purposes as such manor or undivided share thereof, or as the case may be, such apportioned annual rent shall be subject at the time of making such

conveyance; or in case of a sum of money paid either wholly or in part for the enfranchisement of lands, shall pay and apply the same in or towards the purchase or redemption of the land-tax payable in respect of the manor of which the lands enfranchised shall be parcel, or of any other hereditaments which shall be subject to the same uses as such manor; and the persons to whom any gross sum of money, being the consideration either wholly or in part for the enfranchisement of any lands, or for the release from any apportioned annual rent, shall be paid in pursuance of the directions of this act, or the persons appointed under this act in their stead, shall in the meantime and until they shall apply such sum in such payments or purchases as aforesaid, invest the same in their names in the three per centum consolidated, or three per centum reduced bank annuities, or on government or real securities in England or Wales, and the dividends or interest arising therefrom shall be paid to the persons who would for the time being have been entitled to the rents and profits of the hereditaments so to be purchased, conveyed, and settled, in case the same had been then actually purchased, conveyed, and settled.

*Parties to Assurance.*

33. That every enfranchisement, release, conveyance, grant, charge, demise, and apportionment which shall be made under this act, shall be effected by some one of the assurances (not being a will) by which such enfranchisement, release, conveyance, grant, charge, demise, and apportionment could have been made, if the person making the same was seised or possessed of, or entitled to for an estate at law in fee-simple absolute, the manor, lands, or apportioned annual rent to be respectively affected by such enfranchisement, release, conveyance, grant, charge, demise, and apportionment; and if the person to make such assurance shall be the husband of a feme covert, then such feme covert shall concur in such assurance and every assurance by which a feme covert shall so concur, shall be acknowledged by her pursuant to an act passed in the third and fourth years of the reign of his present Majesty, intituled, "An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance;" and if any manor, lands, and annual rent shall be settled to the separate use of a feme covert, such assurance shall be made by her as if she were a feme sole; and every assurance by which any enfranchisement, conveyance, grant, or demise shall be made, shall take effect by transmutation of possession; and every assurance by which any enfranchisement, conveyance, or grant shall be made, shall pass to the person to whom the same shall be respectively made, an estate in fee-simple at law, except in the case of the conveyance to the lord of any manor of lands held by copy of court roll for any estate not being an estate of inheritance, in which case such conveyance shall pass to such lord all the estate and interest at law for which such lands shall have been granted out, to hold by copy of court roll, freed and discharged

from the tenure by copy of court roll, and from all right, claim, and demand whatsoever either at law or in equity of or by any person, to have the same regranted, to be held by copy of court roll; and every conveyance and grant under this act in consideration of the enfranchisement of lands, shall be made by the same assurance by which such lands shall be enfranchised; and every conveyance under this act in consideration of the release of an apportioned annual rent, shall be made by the same assurance by which such apportioned annual rent shall be released; and every assurance by which any such enfranchisement, release, conveyance, grant, charge, demise, and apportionment shall be made under this act, shall be sealed and delivered by the person making the same in the presence of, and shall be attested by *two* or more witnesses.

34. That where the concurrence or consent of any person shall be requisite under this act to any enfranchisement, release, conveyance, grant, charge, demise, or apportionment, such concurrence or consent shall be given by the assurance by which the enfranchisement, release, conveyance, grant, charge, demise, or apportionment shall be made; and the person whose concurrence or consent shall be requisite, shall seal and deliver such assurance in the presence of *two* or more witnesses, who shall attest such sealing and delivery.

*Provisions for existing Trusts.*

35. That all lands which shall be conveyed, and all annual rents which shall be granted in consideration, either wholly or in part, of the enfranchisement of lands under this act, shall be subject to all such settlements, wills, mortgages, deeds, and other instruments, estates, rights, titles, interests, incumbrances, claims, and demands, and no other, as shall affect the manors of which the lands enfranchised were respectively parcel at the time of their enfranchisement, and also as such manors would have been respectively subject or liable to if such enfranchisement had not been made.

36. That all lands enfranchised under this act which shall be conveyed under this act, in consideration either wholly or in part of the release of an apportioned annual rent, shall be subject and liable to all such settlements, wills, mortgages, deeds, and other instruments, estates, rights, titles, interests, incumbrances, claims, and demands, and no other, as shall, at the time of such release affect the apportioned annual rent so released, and as such apportioned annual rent would have been subject or liable to if such release had not been made.

37. That all lands enfranchised under this act, shall be subject and liable to all such settlements, wills, mortgages, deeds, and other instruments, estates, rights, titles, interests, incumbrances, claims, and demands, and no other, as shall affect such lands at the time of such enfranchisement, (not being customary or copyhold payments, duties, services, or customs,) and shall be also subject to all such wills made prior to such enfranchisement by persons living at the time of such enfranchise-

ment, as would have affected such lands, if such enfranchisement had not been made.

38. That all lands enfranchised under this act, which shall be released under this act from an apportioned annual rent, shall from and after such release be subject to such settlements, wills, mortgages, deeds, and other instruments, estates, rights, titles, interests, incumbrances, claims, and demands, and no other, as shall affect such lands at the time of such release, and would have affected the same if such release had not been made.

39. That every assurance by which an enfranchisement, grant, conveyance, release, charge, demise, or apportionment, shall be made under this act, shall be valid and binding on all persons whomsoever having or claiming any estate, right, title, interest, charge, lien, incumbrance, claim, or demand whatsoever in, to, out of, or upon the manor of which the lands enfranchised were parcel at the time of such enfranchisement, or the lands and apportioned annual rent respectively enfranchised, granted, conveyed, released, charged, demised, and apportioned, or the lands enfranchised and charged with the apportioned annual rent for the time being apportioned, or who might or would have had and claimed any estate, right, title, interest, charge, lien, incumbrance, claim, and demand whatsoever in, to, out of, or upon such manor, lands, and apportioned annual rent respectively if such assurance had not been made, and that notwithstanding any defect in the title of the persons respectively making and executing such assurance, or consenting in or consenting to the same; and the recitals in every assurance by which an enfranchisement, grant, conveyance, release, charge, demise, or apportionment shall be made under this act, shall for all purposes whatsoever be deemed conclusive evidence of the truth of the facts therein stated, and also of the contents of all deeds, wills, and other documents therein recited; and it shall not be necessary to produce in any court of law or equity, or otherwise, any deed, will, or other document in verification of any recital contained in any such assurance.

*Provisions for existing Leases.*

40. That if at the time of the conveyance of any lands under this act, in consideration either wholly or in part of the enfranchisement of any lands, there shall be subsisting in the lands so conveyed any lease, then the lessee under such lease, his executors, administrators and assigns, shall pay, observe, and keep to and with the person to whom such lands shall be so conveyed, or other the person for the time being seized of or entitled to such lands expectant on the determination of such lease, and his executors or administrators, the rent, reservations, covenants, conditions, and agreements respectively reserved and contained in such lease, or such and so many or such part of the rent, reservations, covenants, conditions, and agreements respectively reserved and contained in such lease, as are or ought to be thenceforth respectively paid, observed, and kept in respect of the lands so conveyed; and the person to

whom such lands shall be conveyed, or other person so for the time being seized of or entitled as aforesaid, shall and may from time to time make or bring all such distresses, actions, suits, or entries for non-payment of such rent or reservations, or for non-performance of the covenants, conditions, and agreements in such lease respectively reserved and contained, as could, in case such enfranchisement and conveyance had not been made, have been taken, made, or brought by the persons making such conveyance, or other the person for the time being seized of or entitled to the reversion expectant on the determination of such lease; and that in all such distresses, actions, suits, and entries, the rent, reservations, covenants, conditions, and agreements in such lease reserved and contained on the part of the lessee, his executors, administrators, or assigns, shall be deemed and taken to be annexed to an immediate reversion vested in the person to whom such lands shall be so conveyed, or other the person for the time being so seized of or entitled to such lands as aforesaid.

41. That if at the time of the enfranchisement of any lands under this act, there shall be subsisting in such lands any lease, then the lessee under such lease, his executors, administrators, and assigns, shall pay, observe, and keep to and with the person for the time being seized of or entitled to the lands so enfranchised, and his executors or administrators, the rent, reservations, covenants, conditions, and agreements respectively reserved and contained in such lease, or such and so many, or such part of the rent, reservations, covenants, conditions, and agreements respectively reserved and contained in such lease, as are or ought to be thenceforth respectively paid, observed, and kept, in respect of the lands so enfranchised; and the person for the time being seized of or entitled to the lands so enfranchised, shall and may from time to time make or bring all such distresses, actions, suits, or entries for non-payment of such rent or reservations, or for non-performance of the covenants, conditions, and agreements in such lease respectively reserved and contained, as could have been taken, made, or brought by the person who would for the time being have been entitled to the lands so enfranchised, in case such enfranchisement and conveyance had not been made; and in all such distresses, actions, suits, and entries, the rents or reservations, covenants, conditions, and agreements in such lease reserved and contained on the part of the lessee, his executors, administrators, or assigns, shall be deemed and taken to be annexed to an immediate reversion vested in the person for the time being seized or possessed of or entitled to the lands so enfranchised.

*Limitation of future Copyholds.*

42. That no lands which shall be conveyed as a consideration either wholly or in part for any enfranchisement under this act, shall at any time after such conveyance, be re-granted to be held by copy of court roll.

43. That if after the *thirty-first day of December one thousand eight hundred and thirty-five*,

any person shall be seized or possessed of, or entitled to, in his own right at law, any manor for any estate (not being a particular estate, and not being an estate vested in any person by way of mortgage or charge, or as a mere lessee or assignee of any lease, and not being an estate for a term of years absolute, or an estate tail after possibility of issue extinct), and shall at the same time be seized or possessed of, or entitled to, in his own right at law, any lands parcel of such manor, for the whole estate, for which such lands shall, under the grant subsisting at the time of his becoming so seized, possessed or entitled, have been granted out to be held by copy of court-roll, (whether such person shall be seized or possessed of or entitled to such manor or lands respectively in possession or in remainder or reversion, expectant on the determination of an estate, vested in any person as a mere lessee or assignee of any lease, or expectant on the determination of any estate for a term of years absolute vested in any person, not being a lessee or assignee of any lease,) then such lands shall not be re-granted to be held by copy of court-roll.

44. That after the *thirty-first day of December, one thousand eight hundred and thirty-five*, the lord of any manor, whatever may be his estate or interest therein, shall not grant out to be held by copy of court-roll, for any estate whatsoever any lands which shall not have been previously actually granted out to be held by copy of court-roll.

45. That lands already, or on or before the *thirty-first day of December, one thousand eight hundred and thirty-five*, granted out to hold by copy of court roll for estates for lives or years shall not on the determination, by effluxion of time, of the grants under which such lands shall be respectively held by copy of court-roll (whether such grants shall determine before or on or after the said *thirty-first day of December, one thousand eight hundred and thirty-five*) be granted out after the said *thirty-first day of December, one thousand eight hundred and thirty-five*, to hold by copy of court roll, unless there shall be in the manors of which such lands are respectively parcel customs, under which the lords of such respective manors shall be compellable on the determination, by effluxion of time, of the grants under which such lands shall for the time being be respectively held by copy of court roll to regrant such lands to hold by copy of court roll.

46. That when and so often as, after the *thirty-first day of December, one thousand eight hundred and thirty-five*, the grants under which any lands shall be respectively held by copy of court-roll for an estate for life or lives, or for years, shall determine by effluxion of time, and there shall not be in the manor of which such lands are parcel, a custom under which the lord of such manor shall be compellable on the determination of the grant under which such lands shall for the time being be held by copy of court-roll to regrant such lands to hold by copy of court-roll, then in case the person who shall on the determination

of such grant be seized or possessed of or entitled to such manor in possession, or to the rents, issues and profits thereof, shall be so seized or possessed or entitled as the lessee or assignee of any lease, or for any particular estate, it shall be lawful for the person so seized, possessed or entitled to demise or lease such lands for the same estate or estates for which such lands could, according to the custom of such manor, have been granted out to hold by copy of court-roll in case this act had not been passed, but nevertheless at under and subject to the same rents, heriots and payments as would have been payable in respect of such lands, in case the same had been granted out to hold by copy of court-roll: provided nevertheless, that nothing herein contained shall be taken to authorize any person to make any demise or lease under this present clause, unless he shall be an ecclesiastical corporation, or (not being an ecclesiastical corporation) shall be seized, possessed or entitled for a particular estate under a settlement, deed, will or other instrument made or executed already, or on or before the said *thirty-first day of December, one thousand eight hundred and thirty-five*, or under any deed or instrument already, or at any time hereafter, made or executed in pursuance of any such settlement, deed, will or other instrument, or unless he, or the person under whom he claims, shall be the lessee or assignee of any lease already, or on or before the *thirty-first day of December, one thousand eight hundred and thirty-five*, granted by any person whomsoever, or shall be the lessee or assignee of any lease at any time after the said *thirty-first day of December, one thousand eight hundred and thirty-five*, granted by any ecclesiastical corporation, or granted by any person (not being an ecclesiastical corporation) already, or at any time hereafter, seized, possessed or entitled to a particular estate under a settlement, deed, will or other instrument made or executed already, or on or before the said *thirty-first day of December, one thousand eight hundred and thirty-five*, or under any deed or instrument already, or at any time hereafter, made or executed in pursuance of any such settlement, deed, will or other instrument.

### SIR JOHN CAMPBELL'S REMARKS ON LAWYERS' FEES.

*To the Editor of the Legal Observer.*

Sir,

In the papers of the 19th instant, I find that Sir John Campbell is reported to have urged in support of the abolition of arrest, that "the Bill would operate in many instances beneficially, by bringing directly into the creditors' pockets that money which had heretofore been expended on lawyers."

Perhaps you will not consider it out of place, that I should call your attention to these observations, as they come from an eminent member of the profession; and appear to me to be utterly unworthy of him, and wholly unfounded. They are the more to be regretted, as upon the occasion of the Bill for a General Registry, a statement of a similar nature was made by the same gentleman, attributing to the profession of the law the unworthy motive of opposing that measure for the sake of their fees. The bill, however, was rejected by a large majority of the House of Commons, thereby most satisfactorily upsetting the argument of the learned gentleman.

Even if the statement had any foundation in truth, it comes with an ill grace from a successful member of the profession; and he must surely have felt himself lamentably at a loss for argument, to have been obliged to resort to the common place topic of abusing the lawyers. Besides, the position is entirely groundless; the fees of the profession will not be diminished if the bill be as effectual, as no doubt its learned author expects it will be, for in that case creditors will have a greater inducement to go to law; and if the bill should deprive the creditor of the means of obtaining that which is justly due to him, it is evident that the money will not find its way into the pockets of the creditor, but into those of the intended official assignees. As regards the decrease of the amount of costs in each individual case, the statement is equally untrue; for the extra costs occasioned by arrest or imprisonment do not at present come to the lawyer, but to the sheriff's officer and others.

I regret that the learned counsel should suffer his desire of acquiring popularity, and of carrying a favorite measure, to induce him to vaunt his own liberality at the expense of the whole body of the profession, and that he should follow the track of a learned lord, whose ostentatious liberality is at length seen in its proper light.

I trust, with this example before his eyes, he will not persevere in a course which must inevitably lower him in the esteem, and bring upon him the disapprobation of those who cannot suffer such conduct to pass unnoticed.

FIAT JUSTITIA.

### ON THE ADMINISTRATION OF UNLAWFUL OATHS.

THE law on the subject of the administration of Unlawful Oaths, having lately received some additions from judicial decisions, it may not be useless shortly to consider the subject.

By the 37 G. 3, c. 123, s. 1, it is enacted, that any person who shall in any form whatsoever administer, or aid in ad-

ministering, or be present at the administering of any oath or engagement, purporting or intended to bind the person taking the same to engage in a mutinous or seditious purpose, or to disturb the public peace, or to be of any society formed for any such purpose, or to obey the orders of any body of men or leader not having authority by law for that purpose, or not to inform against any association, or not to reveal any unlawful combination, shall on conviction be adjudged guilty of felony, and may be transported for seven years; and every person who shall take such oath, shall on conviction be adjudged guilty of felony, and may be transported for seven years. By the 57 G. 3, c. 19, s. 25, it is enacted, that after the passing of that act, all societies or clubs, the members whereof shall be required to take any unlawful oath or engagement within the meaning of the 37 G. 3, c. 123, or any oath not required or authorised by law, and every society or club, the members whereof shall bind themselves by any such oath on becoming a member of such society or club, and every such society or club, the members whereof shall be required to take any test or declaration not required or authorised by law, in whatever manner such taking shall be performed, whether by signs, words, or otherwise, shall be deemed unlawful combinations within the meaning of stat. 39 G. 3, c. 79.

Under these statutes it was held, that the provisions of the 37 G. 3, c. 123, are not confined to oaths administered with either a mutinous or seditious object. Thus where a party of sixteen persons were going out armed for the purpose of night poaching, before they went they were all sworn to secrecy by the prisoner, not on a Testament, but on a book called the "Young Man's Best Companion:" this was held to be a felony within the statute; Mr. Justice *Holroyd* saying in his summing up, "If the oath administered by the prisoner to the poachers was intended to make the people believe themselves under an engagement, it is equally within the act, whether the book made use of was a Testament or not. As to the assembly itself, and its object, it is impossible that a meeting to go out with faces disguised, at night, and under such circumstances, can be any other than an unlawful assembly; in which case the oath to keep it secret, is an oath prohibited by the statute. If to go out in such a manner be not indictable as a conspiracy, it is clearly an offence visitable by penalties; perhaps it may be even indictable as a riot.

It is not, however, necessary to determine that question now, because it is beyond all doubt an assembly for the purpose of an illegal act." <sup>a</sup>

In a very recent case,<sup>b</sup> the facts as disclosed in the depositions were these:—A number of persons employed in making buttons met for the purpose of entering into a union. They declared that they would not make any buttons under certain prices: They sang and prayed, and then took an oath on the Bible, blindfolded, and in an imposing form, not to make buttons under the stipulated prices, that they would keep all the secrets of the lodge, and never give their consent that any of the money should be appropriated to any other purpose than the unions, and that if they did, that their souls might go to the bottomless pit. The persons who delivered the oaths had surplices on; and other means were resorted to, calculated to awe and impress the persons to whom the oath was administered. The prisoners were advised to plead guilty. Mr. Justice *Williams*, in passing sentence, said, "I am bound to say, that having read the depositions, I do not entertain a particle of doubt, that provided the facts there disclosed had been proved against you, it was an offence within the statutes; and I believe that no man who has the fairness or industry to peruse those acts of parliament, and to understand them, can entertain a doubt that to administer an oath or engagement not to reveal the secrets of any association, is within the stat. 37 G. 3, c. 123, as explained and modified by subsequent statutes. I say that it is within the meaning of those statutes, not, as has been ignorantly supposed, because it had reference to any matter respecting wages, but on the ground that every association of that kind, bound together by an oath not to disclose the proceedings of that society, is for that reason, and not for the others, an unlawful combination within the meaning of the statutes of the realm."

In an indictment under the 37 G. 3, c. 123, it is sufficient to allege and prove the object of the oath and engagement, without stating its tenor or purport; and parol evidence may be given of the oath, and explanation of the real design.<sup>c</sup>

<sup>a</sup> *Res v. Brodrick*, 6 Car. & Pay. 571, n;

<sup>b</sup> *Res v. Ball*, 6 Car. & Pay. 563.

<sup>c</sup> *Res v. Mous*, 6 East, 419, n.

## THE PROPERTY LAWYER.

No. XLII.

## COVENANTS TO REPAIR.

It was ruled in the case of *Harris v. Jones*, 1 Moo. & Rob. 173, that a general covenant to repair is satisfied by the lessee keeping the premises in substantial repair. In the following case, which is one of considerable importance, it was decided, that under the usual covenants to repair, a tenant is not liable for such dilapidations as result from the natural operations of time and the elements. The circumstances were these :

John Stayley, by a lease dated 16th Nov. 1808, demised a house and premises called the Chicken House estate, situate at Hampstead, to James Daniell, his executors, &c. for the term of 21 years, at the yearly rent of 50*l*. The lessee covenanted, " that he, his executors, administrators, or assigns, should and would from time to time, and at all times during, &c., at his and their own proper costs and charges, well and sufficiently repair, uphold, support, maintain, glaze, and amend, and keep the said messuage or tenement, and other buildings, and the windows and sashes, tilings, &c., and all other the appurtenances thereby demised, in, by, and with all and all manner of needful and necessary reparations and amendments whatsoever; and should and would, at the end or other sooner determination of the said demise, leave, surrender, and yield up unto the said John Stayley, his heirs and assigns, the said messuage or tenement, and all and singular other the premises, with the appurtenances thereby demised, so well and sufficiently repaired, upheld, supported, maintained, glazed, &c., and kept as aforesaid, and all new erections, buildings, and improvements that should or might be made in or upon the said premises in the meantime, (reasonable use and wear thereof in the meantime only excepted)." Proviso for re-entry on breach of covenants. The plaintiffs represented John Stayley, the lessor above-named, and the defendants were the executors of Daniell, the lessee; but the premises were in the occupation of under-lessees. The plaintiffs having brought ejectments against the tenants in possession, on the ground that the interest of the lessee had become forfeited by breaches of the covenant, the defendants filed a bill in the Court of Chancery against the plaintiffs for an injunction; whereupon the Lord Chancellor directed the following issue to be tried:—Whether the said James Daniell, his executors, &c. did from time to time, &c. well and sufficiently repair, &c.

(following the words of the covenant), according to the true intent and meaning of the said indenture? As to the breach of covenant to repair, it was proved that the Chicken House was a very old building, of the age of between two and three centuries at the least, and it was described as being now in a very dilapidated state; the walls with cracks in them, and out of the perpendicular; the floors sunk; many of the timbers rotten, the tilings and woodwork of the sashes broken, &c. The tenant had painted the inside at the time of the cholera, two or three years before the trial, but it did not appear that much else had ever been done to it. It did not appear that the defendants had ever been required to perform the covenants before the commencement of these proceedings.

Tindal, C. J., in commenting on the evidence to the Jury, said, where a very old building is demised, and the lessee enters into a covenant to repair, it is not meant that the old building is to be restored in a renewed form at the end of the term, or of greater value than it was at the commencement of the term. What the natural operation of time flowing on effects, and all that the elements bring about in diminishing the value, constitute a loss, which, so far as it results from time and nature, falls upon the landlord. But the tenant is to take care that the premises do not suffer more than the operation of time and nature would effect; he is bound by seasonable applications of labour to keep the house as nearly as possible in the same condition as when it was demised. If it appears that he has made these applications, and laid out money from time to time upon the premises, it would not perhaps be fair to judge him very rigorously by the reports of a surveyor, who is sent upon the premises for the very purpose of finding fault. Still there is only a certain latitude to be allowed in these cases; and the Jury are to try whether or not the lessees have, in the present instance, done what was reasonably to be expected of them, looking to the age of the premises, on the one hand, and to the words of the covenant which they have chosen to enter into, on the other. The Jury said, that, under all the circumstances, they thought the covenants had not been broken, and they found a verdict for the defendants.

A motion was afterwards made before the Lord Chancellor to set aside the verdict, on the ground that it was against the evidence; but no objection was made to the manner in which the Lord Chief Justice had left the case to the Jury. *Gutteridge v. Munyard*, 1 Moo. & Rob. 334.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—PARTIES TO APPEALS.

*It is contrary to the practice of this Court to hear the counsel of a party, having a distinct interest in the suit, in support of an appeal brought by another party. He must present a distinct petition of appeal, to entitle him to a hearing.*

Mr. Tinney having opened an appeal in a suit by executors and trustees, to establish a charge against the estates, which they were to convey, under the testator's will, to his eldest son—

Mr. James Russell was about to address the Court in behalf of another son, who had a charge of 1000*l.* in the same estates.

Mr. Tinney objected to his being heard, as his client was not a party to the appeal.

Mr. Russell.—All the parties to the original hearing may appear on the rehearing, the appeal being from the whole decree. *Jackson v. Jackson*. Four distinct parties have interest in the cause; and, unless all may be allowed to join in the appeal, they must present petitions of appeal at a great expense, or their rights may be prejudiced. There is not a case to be found in which a second party, having the same interest as the appellant in the matter of the appeal, presented a distinct petition.

Mr. Tinney.—You have not a right to say a word, as your client did not petition.

The Lord Chancellor.—I always understood the practice to be, that if you did not present a petition of appeal, you ought not to be heard upon it.

*Stedman v. Enticknap*, at Westminster, January 17, 1835.

### King's Bench Practice Court.

#### INTERPLEADER ACT.—SHERIFF.—CLAIMANT.—COSTS OF ISSUE.

*If an unfounded claim is made by a person on certain goods seized by the sheriff, he is liable to all the costs consequent on the making that claim.*

This was a sheriff's rule, obtained under the Interpleader Act. Writs of *f. fa.* having been directed to the sheriff, he made a seizure under them of the defendant's goods. As soon as he had levied, and previous to the sale, he received notice of a claim from a person who stated the goods to belong to him. The sheriff accordingly came to the Court for relief under the Interpleader Act, and a rule having been obtained, the parties appeared before the Court. An issue was ultimately directed to be tried between the execution creditor and the claimant. Afterwards the claimant gave notice to the execution creditor, that he had abandoned his claim, and therefore he refused to proceed with the trial of the

issue directed by the Court. The present application was therefore made for the purpose of obtaining for the execution creditor the costs of appearing on the sheriff's rule, and of coming to the Court for an order to take out the money realised by the sale of the goods, and which had been paid in pursuance to its directions.

*Williams, J.*, after hearing counsel in opposition to the application, directed, that the execution creditor should receive his costs, both for appearing on the sheriff's rule, and of this application to take out the money.

Rule accordingly.—*Bragg v. Hopkins*, H. T. 1835. K. B. P. C.

#### AFFIDAVIT OF DEBT.—PARTNER.—SURVIVOR.

*An affidavit to hold to bail, alleging the debt to be due to the deponent and his late partner, is not sufficiently certain.*

This was an application to set aside a bail-bond, on the ground of a defect in the affidavit to hold to bail. The alleged defect was, that the person making the affidavit stated the debt to be due to himself and his "late partner." This, it was contended, was not a sufficient statement of the manner in which the debt became due.

*Patteson, J.*, thought that it was not sufficiently certain, as the debt might be due to him as surviving partner, or merely as a person who had ceased to be a partner, still alive.

Rule absolute for delivering up the bail-bond to be cancelled. *Edgar v. Waddilove*, H. T. 1835. K. B. P. C.

### Eschequer of Pleas.

#### COSTS OF THE DAY.—DEMURRER.—JOINDER IN DEMURRER.

*A party is not entitled to obtain from his opponent the costs of the day, when those costs have been caused by his own unnecessary proceedings.*

In this case the defendant had obtained a rule *nisi*, requiring the plaintiff to shew cause why he should not pay the costs of the day. The facts appeared to be these: the defendant demurred to a replication, and the plaintiff entered the cause in the paper for argument. The defendant accordingly came prepared to argue, but it could not be heard in consequence of there being no joinder in demurrer, nor the demurrer books delivered by the plaintiff to the Judges or the defendant.

Cause was shewn against this rule, when it was contended, that there was no joinder in demurrer, and that therefore the defendant could not be permitted to come to argue a demurrer, which was not then fit for argument.

*Parke, B.*, I think the defendant must have known, that it was useless putting the cause in the paper for argument when there was no joinder in demurrer. This rule must therefore be discharged, and with costs.

Rule discharged, with costs.—*Howorth v. Hubbersty*, H. T. 1835. Escheq.



## ATTACHMENT.—SUBPÆNA.—WITNESS.—CONDUCT MONEY.—ORIGINAL SERVICE.

*The original subpoena must be shewn to a witness at the time of service, in order to bring him into contempt, and render him liable to an attachment for disobedience to it.*

Cause was shewn against a rule nisi which had been obtained in this case, for an attachment against a witness in this cause for disobeying a subpoena served upon her. An affidavit was produced, stating that no original was shewn to her at the time the service was effected, nor was there any conduct money tendered to her. The cause was a town cause.

This affidavit was objected to on the ground of the date in the jurat not being sufficiently clear. The original date appeared to have been January 31, the 3 having been written over a 2, and it was with difficulty that it could be seen what figure it really was.

*Per Curiam.*—(After looking at affidavit). We do not consider it an erasure. The original ought to have been shewn to the witness. It being a town cause, no conduct money is required. The present rule must be discharged, with costs.

Rule discharged, with costs.—*Jacob v. Hungeate*, H. T. 1835. Excheq.

## SMALL DEBTOR.—EXECUTION.—REDUCING JUDGMENT.

*A debtor in execution for less than 20l. during twelve months, may be discharged, although the judgment was for a greater amount.*

In this case an application was made to discharge the defendant out of custody, on the ground of his having been in prison for twelve months for a debt under 20l. The real debt, it was alleged, amounted only to 18l. 10s., and the execution was for that sum, but the judgment was for 100l. The only difficulty in the case was, whether the judgment should not be reduced to the real debt.

*Perks*, B. That is not necessary. I am of opinion, that the act applies to cases like the present.

Rule absolute.—*Harris v. Parker*, H. T. 1835. Excheq.

## SECOND ARREST.—DISCONTINUANCE.—DETAINEE.—SHERIFF.

*Notice of discontinuance of a bailable action is not necessary previous to a second arrest pursuant to a Judge's order.*

In this case it appeared that the defendant had been arrested on the 24th, and gave an undertaking to put in bail. Notice, however, having been received by the plaintiff of an irregularity, he obtained a rule to discontinue, on payment of costs, which he accordingly did. The plaintiff afterwards, by leave of a Judge, arrested the defendant a second time, and was detained by the sheriff on both writs, he (the sheriff) not having received any notice of the discontinuance of the former suit. It was

now sought to set aside the bail-bond given on the second arrest, on the ground of negligence on the part of the plaintiff, in not adopting proper measures for the purpose of acquainting the sheriff of the discontinuance.

*Per Curiam.*—No notice is required. It is shewn that the defendant sustained no inconvenience. We are of opinion that under these circumstances this rule cannot be granted.

Rule refused.—*Price v. Day and others*. H. T. 1835. Exchequer.

## DEMURRER.—SIGNING JUDGMENT.—READING RECORD.—DRAWING UP RULE.

*A rule for setting aside a demurrer on the ground of its not being frivolous, must be drawn on reading the record, or the Court can not look at it.*

Cause was shewn against a rule nisi which had been obtained in this case, for the purpose of setting aside a demurrer, by the defendant, on the ground of irregularity, and to permit the plaintiff to sign judgment as for want of a plea. The declaration was in assumpsit on a promissory note. Plea that there never was any consideration for giving the note. Replication that there was a consideration, and concluded to the country. The defendants specially demurred to the replication on the ground of its not stating the particulars of consideration, and for not concluding with a verification.

On shewing cause it appeared that the rule had been drawn up upon reading the affidavit only.

The Court was of opinion that they could not look at the record, and under those circumstances discharged the rule, but without costs.

Rule discharged without costs.—*Howorth v. Hubbersty*, H. T. 1835. Excheq.

## INDORSEE.—ACCEPTOR.—BILL OF EXCHANGE.—CONSIDERATION.

*In an action by an indorsee of a bill of exchange against the acceptor, the plea of want of consideration should deny that the indorsee had given any.*

This was an action by an indorsee against the acceptor of a bill of exchange. The defendant pleaded that there was not at any time any consideration for his accepting the said bill of exchange. The plaintiff specially demurred, on the ground of the plea being no answer to an action by an indorsee.

In support of the plea it was submitted, that the allegation that there was no consideration for the payment of the bill, must be taken also to mean that the plaintiff had not given value.

*Per Curiam.*—The plea evidently denies any consideration, but it does not go on to state that the plaintiff did not give a valuable consideration for the indorsement to him, as it should have done.

Judgment for the plaintiff on demurrer, and the Court refused leave to amend.

*Reynolds v. Iremey*, H. T. 1835. Excheq.

## NOTES OF THE WEEK.

*Royal Assents.*

Chester Criminals Execution. [Mar. 20, 1835.]

## HOUSE OF LORDS.

*Bills for second Reading.*

*Title of the Bill.*      *Proposer.*

Residence of Clergy. Lord Brougham.  
Pluralities Prevention. Lord Brougham.  
Ecclesiastical Jurisdic-  
tions. Lord Brougham.

*Consideration of Report.*

Contempts in Equity  
(Ireland). The Ld. Chancellor.

*Third Reading.*

Oaths Abolition. Duke of Richmond.  
[30th Mar.]

Infants' Property (Ire-  
land). The Ld. Chancellor.

## HOUSE OF COMMONS.

*Bills to be brought in.*

Law of Tenure. Sir J. Campbell  
Law of Escheat. Sir J. Campbell.  
Prisoners' Defence. Mr. Ewart.  
County Coröners. Mr. Cripps.  
Poor Law Amendment. Mr. Trevor.  
Registration of Births,  
&c. Mr. Wilks.  
Tithes Commutation. Chanc. of Excheq.

*Second Reading.*

Law of Libel. Mr. O'Connell.  
Bankruptcy Funds. Master of the Rolls.  
Ecclesiastical Courts. Attorney General.  
Clergy Discipline. Attorney General.  
Dissenters' Marriages. Chancellor of Exch.

*In Committee.*

Abolishing Imprison-  
ment for Debt, &c. Sir J. Campbell.  
Copyholds Enfran-  
chisement. Sir J. Campbell.  
Highways. Mr. Lefevre.  
8th April.  
Registration of Voters. Lord J. Russell.  
6th May.

*Consideration of Reports.*

Execution of Wills. Sir J. Campbell,  
Law of Executors, &c. Sir J. Campbell.

*Third Reading.*

Illegal Securities. Mr. Rolfe.

SELECT COMMITTEES ON THE WILLS AND  
COPYHOLDS BILLS.

The Select Committee on the Bill for amending the Law of Wills, is the same as that for Imprisonment for Debt, stated p. 415, except that Dr. Nicholl is added to the list, and the following names omitted: Lord Francis Egerton, Lord James Stuart, Mr. Lefroy, Colonel Perceval, Mr. Humphrey, Mr. Bernal, Mr. Parry, Mr. Alderman Copeland, Mr. Phillips, Mr. Maule, Lord Dalmeny, Mr. Baring, Mr. Richards, and Mr. Rundle.

The Select Committee on the Bill for Enfranchising Copyholds, is precisely the same as that on the Imprisonment for Debt.

## EQUITY SITTINGS.

The Lord and Vice Chancellor will continue hearing Petitions till Thursday, April 2d, when the Court will adjourn to the first day of Easter Term.

The Master of the Rolls will continue until Wednesday the 1st of April, to hear causes which are set down for Further Directions and Costs only. His Honor will not sit after the 1st of April, until the first day of Easter Term.

The Equity Exchequer, and the Court of Review, have adjourned until the first day of Easter Term.

## ANSWERS TO QUERIES.

## COMMON LAW.

## DISHONORED BILL.—NOTICE. P. 64.

It is evident that the intermediate indorser cannot sue the drawer. *Roscoe v. Hardy*, 12 East, 434; 2 Camp. 460. S. C.; Chitty on Bills, 242. J.

## VERBAL AGREEMENT. P. 79.

A mere verbal agreement would not be binding on A., it not being within the Statute of Frauds. 1 Sugd. & V. P. 108: J.

## BILL IN BLANK. P. 240.

Chitty on Bills, p. 253, after citing the authorities mentioned by R. E. S. says, if a first endorsement on a bill or note be made in blank, it will be assignable after by mere delivery, notwithstanding subsequent endorsements in full having been made thereon. *Smith v. Clarke*, Peake, 225, unless in cases of restrictive endorsements; and Mr. Chitty puts it beyond doubt, in p. 255 *et seq.*

## WILLS.—DEBTS.—REAL ESTATE. P. 240.

*Clifford v. Lewis*, decided, that the real estate was liable. 7 Vea 209; *Worthington on Wills*, 34. J.

## Laws of Landlord and Tenant.

DISTRESS.—SUNDAY. P. 143.

It is evident a distress cannot be made between sun-set and sun-rise. *Gilb. on Distr.* 56, D. Sales and contracts entered into on a Sunday are void. 29 Car. 2. c. 7. I can find no authority that a distress can be made on a Sunday, and I think that the landlord would not be justified in so distraining. J.

DISTRESS FOR TAXES. P. 224.

43 G. 3. c. 161, enables a collector of house and window tax to distrain for arrears of those taxes; and it has even been held upon this stat. that he may distrain the goods of a third person found on the premises, though the goods are only borrowed, and the person in arrear has other goods of his own on the premises sufficient to satisfy the arrears. *Tyson v. Dixon*, 1 Maule & Selw. 600. J.

## QUERIES.

## Common Law.

TITLE—OVERSEERS.

*A.* and *B.* were joint owners of a vessel duly registered. *B.* went abroad for fear of a criminal prosecution, and since quitting England has written several letters to his mother, but refuses to send home any power of attorney or authority whatsoever for the sale of his part of the vessel, (being the only property he is possessed of in this country). *B.*'s wife and children have become liable to the parish, and the overseers threaten to detain the vessel. As it is very much doubted whether the overseers can sell the vessel, so as to give a good title to a purchaser, their names not appearing on the registry, would they be justified in such detention, to the detriment of *A.*? Cannot *A.* compel them to indemnify him, (which they now refuse to do) prior to his paying over to them *B.*'s portion of the profits of the vessel; and if such indemnity were not given, would *B.* be precluded from recovering the same from *A.*, (it having been applied to the maintenance of his wife and children), if he were ever to return to this country, which it is believed he will do? Any of your numerous correspondents would particularly oblige me, by advising generally, what course *A.* ought to pursue. J.

## AD VALOREM STAMPS.

*B.*, a builder, contracted with *C.* for the purchase of a piece of ground, on which he intended to build a dwelling-house. The purchase money for the ground to be paid when the house that was to be built could be sold. The house is built, and *B.* has contracted to

sell the same to a purchaser. *C.* consents to join in the conveyance. Does such conveyance require two *ad valorem* stamps, being the conveyance of separate interests, the one for the purchase money of the ground, and the other the purchase money of the conveyance of the house? or will only one stamp be necessary, viz. an *ad valorem* stamp for the whole purchase money? If so, is it necessary for *B.* to join in the conveyance? J.

## LODGINGS.—TRESPASS.

*A.* rented lodgings of *B.* at so much per week. *A.* borrowed a piano forte of *C.* *A.* went away and cheated his landlord, but left the piano with *B.* who refuses to deliver up the same to *C.* the real owner. *C.*, not being willing to commence an action of trover, when *B.* was absent from his house, employed several men, and went with them and took the piano from *B.*'s house. If an action is brought by *B.* for the trespass, what defence will *C.* have? Cannot he justify his entry under his title? Vide *Turner v. Meymott*, 1 Bing. 158; *Raikes v. Townson*, 2 Smith, 2. 9 Co. 5 C b. J.

## THE EDITOR'S LETTER BOX.

We are glad to find that our Series of Common Law articles are approved. The subject of Contracts will be resumed at an early period.

The extent of the Parliamentary matter this week has rendered it necessary to postpone several Communications, for which we hope to find room in the next number.

We beg to remind a Correspondent, that the New Rules of Pleading were published separately from the Common Law Practice, so that his suggestion in that respect appears to have been anticipated. He has not very clearly stated his other recommendations.

The Queries and Answers of S.; W. Y. C.; A. B.; "Spec."; and W. S.; have been received.

In the future Monthly Supplements we shall publish, along with the further list of Perpetual Commissioners, the names of the gentlemen who from time to time may be appointed Masters Extraordinary of the Court of Chancery. These, with the other lists, will complete the professional information collected from the Gazette and other authentic sources.

We thank W. L. D. for his communication, and shall take an early opportunity of exposing the practice in question, to the censure it deserves.

We regret that the Letter on the Copyholds Bill arrived too late for insertion this week. It will appear in our next Number.

The Letter on Foreign Affidavits shall be inserted as early as possible.

*Perpetual Commissioners for taking the Acknowledgments of Deeds.*

Wallingford, Berkshire—John Alnatt Hodges.  
Wm. Bowell Shoen.

# The Legal Observer.

Vol. IX.

**SUPPLEMENT  
FOR MARCH, 1835.**

No. CCLXI.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## LAW OF ATTORNEYS.

### RULES OF COURT.

It may be useful to collect the several Rules of Court, for the regulation of attorneys, from the earliest to the present time, in order to shew the extent of the jurisdiction of the Court over that branch of the profession, and the way in which it has been exercised. The perusal of these regulations will probably suggest some improvements which may be beneficially adopted in the present day.

The earliest rule of Court appears to have been made in 1457, (35 Henry 6), relating to the filing of warrants of attorney.

In 1510, (35 Henry 7), a rule was made restraining proceedings by attorneys in the name of the officers of the Court.

In 1564-5, (6 & 7 Eliz.), attorneys were ordered by the Court of Common Pleas, not to make any alteration or amendment in any roll or writing going out of any public office. It was ordered also, that they should satisfy themselves with the suits in that Court, and not bring suits in any other, on pain of being expelled and fined. And regulations were also made for the payment of entries before the end of the succeeding term.

In 1567, (9 Eliz.), a rule was also made by the Common Pleas, to reform all falsities, contempts, misprisions, and other enormities of the officers, clerks, attorneys, and other members of that Court.

In Michaelmas Term 1573, (15 Eliz.), the Court of Common Pleas ordered, that every attorney of that Court should attend in Court by the second return of every term, Michaelmas term excepted, and in that term by the third return at farthest, on pain to forfeit to the box 3s. 4d. for every such offence, unless he should have reasonable excuse well proved. It was also ordered, that such attorneys as had been absent and not given their due attend-

ance, or that had not been towards any cause or matter for *two years*, should be put out of the roll.

In 1582, by a rule in the Common Pleas of Trinity term, (24 Eliz.) it was ordered, that if any attorney of that Court should absent himself two terms together from the Court, except by reason of sickness, or other like urgent cause, to be allowed of by the Court, he should be forejudged in Court, and no longer an attorney thereof.

In 1615, (Easter term, 12 Jac. 1), the rule of Michaelmas, (15 Eliz.) was reinforced, with an extension of the penalty to 40s. for the first offence, and for the second to be expelled the Court, unless a just and reasonable excuse should be offered to the satisfaction of the Court.

In 1617, (14 Jac. 1), the number of attorneys of each Court was ordered to be received, and to be drawn to a competent number in each Court, and the superfluous number removed; wherein respect was to be had that the most unfit and unskilful persons should be removed.

In 1633, (8 Car. 1), it was ordered in the Common Pleas, that no one should be admitted an attorney unless he had served *six* years to a clerk or attorney of the Court: or, for his education and study in the law, should be approved of by the Justices of the Court, and admitted of one of the inns of Court or Chancery.

In 1645, (Hilary term, 21 Car. 1), by a rule of the King's Bench, attorneys were ordered to be put off the roll in case of their not attending in three weeks of Easter.

In 1654, (Michaelmas term), the “Upper Bench” ordered, that all officers and attorneys of that Court should appear in person upon or before the fourteenth day of Michaelmas term, and upon or before the seventh day of every other term, upon pain of 10s. for the first default, 20s. for the second, and putting out of the roll upon the third default.

It was also required in both Courts, that all officers and attorneys should be admitted of

some inn of Court or Chancery, and be in commons one week in every term, and take chambers there; or in case that could not be conveniently done, to take chambers or dwellings in some convenient places, and leave notice with the butler, under pain of being put out of the roll of attorneys.

And that, for the future, common solicitors should not be admitted to practise, unless they were admitted attorneys of either bench; provided that it extended not to the managing of evidence at a trial, nor to private solicitors or servants of coporations, or other persons, in the causes of their masters.

And that none should be admitted an attorney unless he had practised five years as a common solicitor in that Court, or had served five years as a clerk to some judge, serjeant at law, practising counsel, attorney, clerk or officer of one of the Courts of Westminster, unless his master died or gave over his practice, and should be also upon examination found of good ability and honesty for such employment; and that sufficient proof, to be put into writing, should be made of such service to the prothonotary upon a desire of admittance.

Another direction was, that a jury of able and credible officers, clerks and attorneys, should once in three years be impannelled and sworn to inquire into and reform abuses. They were ordered to present to the Court, for punishment or removal, all admitted attorneys or clerks, who were notoriously unfit.

They were also ordered to inquire of the points usually inquirable by writ, viz. falsities, contempt, misprisions, and offences.

Of new or exacted fees, and of those that had taken them under whatsoever pretence, and to prepare and present a table of the due and just fees, that the same might be fixed and continue in every office, and likewise for the Marshalsea.

And some persons were enjoined and sworn to give evidence; viz. some clerks of the Court and some attorneys in every county, not excluding others.

It was also provided, that the Court should once every year, in Michaelmas term, nominate twelve or more able and credible practisers to continue for the ensuing year, for the following purposes:

To examine such persons as should desire to be admitted attorneys, and appoint convenient times and places for the examination.

The person desiring to be admitted, should first attend the prothonotary with his proof of service, then repair to the persons appointed to examine, and being approved, to be presented to the Court and sworn.

The jury were also to give information to the Court of any breach of orders or misconduct of officers, attorneys and clerks.

A settled course of practice and proceedings was to be settled, especially in cases where there had been uncertainty, and inconveniences in proceedings regulated.

It appears, that the practice of appointing examiners in pursuance of these rules, was long continued; but owing to the negligent

manner in which they were suffered to perform the office, it became obsolete prior to the year 1730, when the statute 2 (G. 2.) c. 23, was passed, and since that time the Judges have not appointed examiners.

By this rule of Michaelmas, 1654, attorneys were prohibited from practising whilst employed as undersheriffs, or bailiffs of sheriffs or liberties. The rule also provided, that no person without rule of Court, order of the Judge, or secondary, and notice to the adverse party or his attorney, should change his attorney; or if done by such order, such new attorney was to take notice at his peril of the rules in the cause whereof the former attorney was liable to take notice, and should pay such first attorney, upon demand, all such fees as the secondary should tax to be due to him.

The same rule (s. 1), directed, that for the prevention of maintenance and brokerage, no attorney be lessee in an ejectment, nor bail for a defendant in any action.

In 1656, (Easter term), attorneys were ordered, upon notice for that purpose, to attend the Court on motions, and in case of neglect to pay 10s.

In 1663, (Easter term, 14 Car. 2), another rule was made, to the same effect as the last.

In 1664, (Hilary term, 15 Car. 2), a rule was made enforcing the attendance of attorneys on the Judges on summonses, and the Master on appointments.

In 1704, (Michaelmas term, 3 Anne), a rule was again made to enforce the admission of attorneys into some of the inns of Court or Chancery, and to take chambers or lodgings near the inns, except the inhabitants of London, Westminster, Southwark, or the suburbs, &c., and to come into commons, according to the custom and orders of those societies, "to their great ease in transacting causes one with another, and much benefit to their clients."

In 1706 (Mich. 5 Anne) the Court of King's Bench ordered, in pursuance of an act of parliament then lately made and provided, to compel the several attorneys of that court to file their warrants of attorney, that the attorney for the defendant, at the time of his appearance for such defendant, should give the plaintiff's attorney the warrant of attorney for such defendant, and at the time of the delivery of the copy of the declaration, or taking thereof out of the office where it was filed, should pay fourpence for the said warrant of attorney, which warrant the said plaintiff's attorney should file with the officer appointed for filing thereof, at the same time when he filed or ought to file the warrant of attorney for the plaintiff; and if such attorney for the defendant should refuse to pay the plaintiff's attorney for the said warrant of attorney in manner and form aforesaid, then such attorney for the plaintiff might sign judgment against the defendant in such action, by default.

The next rule was in 1725 (Mich. 11 Geo. 1) by which no attorney or other person could be summoned to attend any justice of the court, nor could any matters be transacted before such justice at his chambers, or elsewhere out

of court, during the sitting of the court, at Westminster; and it was ordered, that all orders and other transactions so to be made by such justices should be vacated. [*Rescinded, 1821.*]

In 1740 (Mich. 14 Geo. 2) a rule was made repealing the prohibition against attorneys becoming bail.

In 1768 (Hilary, 8 Geo. 3) it was ordered, That the Master shall forthwith cause to be prepared a proper alphabetical book for the purposes after mentioned, and that the same shall be publicly kept at the Master's Office in the King's Bench-Walk, to be there inspected by any attorney or his clerk, without fee or reward; and that every attorney practising in this court and residing in London and Westminster, or within ten miles of the same, shall before the first day of the next term enter in such book (in alphabetical order), his name and place of abode, or some other proper place within the cities of London and Westminster, where he may be served with such notices, summonses, orders and rules, and every attorney afterwards to be admitted, and practising and residing as aforesaid, shall upon his admission make the like entry, and as often as any such attorney shall change his place of abode, or the place where he may be so served with notices, summonses, orders and rules, he shall make the like entry thereof in the said book; and that all notices, summonses, orders and rules which do not require a personal service, shall be deemed sufficiently served on such attorney if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place, and if any such attorney shall neglect to make such entry, that then the fixing up of any notice, or the copy of any summons, order or rule for such attorney in the said Master's Office, shall be deemed a sufficient service, unless the matter be such as shall require a personal service. And it is further ordered, that a copy of this rule shall be publicly fixed up in the Master's Office, and that another copy thereof shall be also fixed up in the chambers of each of the Judges of this Court.

In 1791, (Trinity term, 31 G. 3), it was ordered by the Court of King's Bench, that every person who shall intend to apply for admission as an attorney in this Court, and who shall not have been admitted an attorney or solicitor of any other Court, shall for the space of one full term previous to the term in which such person shall apply to be admitted, cause his name and places of abode, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articulated, written in legible characters, to be affixed on the outside of the Court of King's Bench, in such place as public notices are usually affixed, and also in some conspicuous place in the chambers of each of the Judges of this Court. [This part of the rule is altered by the rule of Trinity term, 33 G. 3,] and in the King's Bench Office; and that no person who shall not have regularly complied with this order, shall in future be admitted an attorney of this Court.

In 1793, (Trinity term, 38 G. 3), it was directed, that every person who intends to apply for admission, shall for the space of one full term in which such person shall apply to be admitted, enter or cause to be entered in a book to be kept for that purpose at each of the Judges' chambers of this Court, his name and place of abode, and also the name and place of abode of the attorney or attorneys to whom he shall have been articulated; and that no person who shall not have complied with this rule shall in future be admitted an attorney.

In 1797, the Court of Common Pleas by a rule of Trinity term, 37 G. 3, ordered, that every person who should be admitted an attorney of that Court, not being already an attorney of the King's Bench or a solicitor in Chancery, or in the Court of Exchequer, should, before he was sworn, file with the secondary his articles of clerkship, together with an affidavit of the due execution thereof, and also the affidavit of the due service under such articles, and of the notice having been given pursuant to the rule of Trinity term, 31 G. 3.

In 1801-2 (Michaelmas term, 42 G. 3, and Michaelmas, 43 G. 3), rules were made relating to warrants of attorney, and the entry of defeazances thereon.

In 1821, (Michaelmas term, 2 G. 4), a rule of the Court of King's Bench discharged the old rule of 1725, by which attorneys could not be compelled to attend a Judge at chambers during the sitting of the Court.

In 1823 (Hil. 3 & 4 G. 4), the Court of King's Bench ordered that no commission for taking affidavits in that Court should be issued to any person practising as a *Conveyancer*, unless such person should be also an attorney or solicitor of one of the Courts at Westminster; and that no commission should issue without an affidavit made by the person intended to be named therein, that he is not and doth not intend to become a practising conveyancer, or that he is an attorney or solicitor duly enrolled in one of the said Courts, and hath taken out his certificate for the current year.

In the same year, by a rule in Easter term, 4 G. 4. the last rule was extended to attorneys and solicitors duly enrolled and practising in any of the Courts in Great Sessions in Wales, or in either of the counties palatine of Chester, Lancaster, or Durham.

In 1831, by 2 Reg. Gen. M. T. 1 W. 4. s. 8, it was ordered, that the clerk of the pleas (in the Exchequer) or his deputy shall forthwith cause to be prepared a proper alphabetical book for the purposes after mentioned; and that the same shall be publicly kept at the office of the clerk of the pleas, to be there inspected by any attorney admitted to practise in that court, or his clerk, without fee or reward; and that every attorney admitted in this Court, and residing in London, or within ten miles of the same, shall forthwith enter into such book, in alphabetical order, his name and place of abode, or some other proper place in London, Westminster, or the borough of Southwark, or within one mile of

the said office, where he may be served with notices, summonses, orders, and rules, in causes depending in this Court; and every attorney hereafter to be admitted, and practising and residing as aforesaid, shall upon his admission make the like entry; and as often as any such attorney shall change his place of abode, or the place where he may be served with notices, summonses, orders, and rules, he shall make the like entry thereof in the said book: And that all notices, summonses, orders, and rules, which do not require personal service, shall be deemed sufficiently served on such attorney, if a copy thereof be left at the place lastly entered in such book, with any person resident at or belonging to such place. And if any such attorney shall neglect to make such entry, then the fixing up of any notice, or the copy of any summons, order, or rule, for such attorney, in the said Office of Pleas, shall be deemed as effectual and sufficient as if the same had been served at such place of residence as aforesaid.

By s. 9 of the same rule, it is ordered, that in all cases where the defendant shall have appeared in any action in the Office of Pleas, and in cases where the plaintiff has entered appearance therein according to the statute, and the defendant shall, by an attorney of that Court, have given notice in writing to the attorney for the plaintiff, or his agent, of his being authorized to act as attorney for such defendant, all proceedings, notices, and summonses, rules and orders, which according to the practice of that Court, were theretofore delivered by the sworn or side clerks of the other party, plaintiff or defendant, be delivered to, or served upon the attorney or attorneys of the other party, plaintiff or defendant.

In 1832, by 1 Reg. Gen. H. T. 2 Wil. 4. s. 91, it is ordered, that an order to deliver or tax an attorney's bill, may be made at the return of one summons, the same having been served two days before it is returnable.

By s. 92 of the same rule, one appointment only shall be deemed necessary for proceeding in the taxation of costs or of an attorney's bill.

And by s. 93, no set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit in which the set-off is sought; provided nevertheless, that interlocutory costs in the same suit awarded to the adverse party, may be deducted.

The preceding, we believe, are all the rules of the Common Law Courts relating to attorneys; but as a complete collection will be important, if there are any others, we shall be obliged by having them pointed out.

## SUMMARY OF THE NEW IMPRISONMENT FOR DEBT BILL.

HAVING given a full analysis of the Bill of the last Session, vol. 8. p. 162, we now merely state a very short outline of the present measure. Its objects and provisions are the same as the last, but the clauses are somewhat differently arranged. The Bill is divided into several parts, each of which is preceded by a preamble or recital.

The 1st division comprises sections 1 and 2, and relates to actions on bonds and bills, and states that "the existing law is defective in not providing a more summary and less expensive mode of recovering debts secured by bonds, bills, and notes." As regards the acceptors of bills and drawers of notes, it is urged that they should be provided with funds in due time; but this speedy judgment and execution against the other parties will frequently be productive of great hardship. The effect will probably be to deter persons from putting their names to bills; and the ultimate and natural consequence must be the restriction of credit and the diminution of trade.

The 2d branch of the Bill includes sections 3 to 13, and provides for the satisfaction of judgment debts, by authorizing a Commissioner to assign sufficient property of the debtor to satisfy the creditor. It commences with reciting "that the law is defective in not providing adequate means for enabling judgment creditors to obtain satisfaction from the property of their creditors." The objection to this part of the Bill is, that on the one hand it will enable the fraudulent more readily to carry their object into effect by collusive judgments, and on the other, give an undue advantage to the sharp-sighted creditor over others equally entitled to be paid, and this at the cost of ruining the debtor without affording him an opportunity to retrieve his affairs.

The 3d department of the Bill, from section 14 to 85, is intended for the relief of "Petitioning Debtors" who surrender their property before a new Court to be established, called the Commissioners' Court, in which official assignees are to be appointed. The preamble to this part of the Bill recites "that it is expedient to enable debtors to make equal distribution of their property amongst their creditors." The act empowers search warrants, and the breaking open of houses where the property of the debtor may be reputed to be concealed. The Bankrupt and Insolvent Law, and in-

deed the whole Law of Debtor and Creditor, will be changed by these provisions, and the interference of official assignees extended to the smallest case of insolvency.

4thly. The Bill recites "that it is expedient to protect creditors more effectually against frauds committed by debtors," and punishments are therefore inflicted for obtaining goods under false pretences, for fraudulent grants and removal of property, for perjury, for false accounts, for absconding, &c. This part of the Bill does not appear, however, to afford any further protection than already exists against fraud and perjury.

The 5th part of the Bill, which is intended to abolish arrest, comprises sections 86 to 97. The recital states, that the "present power of arrest is unnecessarily extensive and severe, and, provision being made to facilitate the remedy of creditors against the property of debtors, ought to be abolished." Arrest is therefore to be done away with, except where the debtor is about to abscond.

The Bill then recites, that "debtors fraudulently intending to abscond, to evade legal demands by creditors, are frequently enabled to execute their purpose from the delay with which the suing out a bailable writ is attended;" and to remedy this, a Justice of the Peace may issue a warrant for the immediate apprehension of the debtor; this is to be granted on an affidavit of the plaintiff swearing to the debt, and that an action will be brought in four days, and stating his belief that the debtor is about to abscond. But it is rendered incumbent on the party arresting to prove, if an action be brought, that he had probable cause for believing in the intention to abscond.

6thly. The Bill then provides for the appointment of Local Commissioners, Registrars, Ushers and Messengers, the machinery of which is comprised in sections 98, to 117.

It is thus manifest, that although the most prominent object of the Bill is the abolition of arrest, it comprehends in the several particulars above-mentioned, other extensive alterations in the law and its practical administration, the effect of which should be duly considered with regard both to creditors and debtors.

On the important subject of abolishing arrest, we refer to the following articles.

## REASONS AGAINST ABOLISHING ARREST IN EXECUTION.

Referring to our former article, p. 388, for the objections to abolishing Imprisonment for Debt on *Mesne Process*, we now proceed to state the reasons given by Mr. Serjeant Stephen, in his supplementary paper to the Fourth Common Law Report.

1. *If the power of arrest in execution be taken away, the creditor will be much more frequently defeated by the concealment of the debtor's property.*

As the law now stands, the inducement to commit this fraud is much counteracted by the consideration that it can only be done at the expence of liberty; for the debtor knows, that though he should conceal his property, his body will remain liable, and that it will even be brought into greater peril by that concealment, because the creditor, finding no goods, is more likely to resort to the alternative of arrest; but supposing no execution to be allowed, except against the property, its effectual concealment would be absolutely immunity to the debtor, and he would therefore lie under a strong and constant temptation to adopt that expedient.

If a motive can be thus supplied, there can be no doubt of his frequently possessing the power. Even without supposing any elaborate contrivance for the purpose, he might often effect his object by simply refusing to point out his effects; for without his aid it would, in many cases, be difficult to discover in what manner they are invested, and where they are to be found. Constant experience proves this to be the case, even with respect to goods; but the difficulty would arise, in a still more formidable shape, with respect to cash, notes, or other securities for money.

Secret trusts and colourable assignments are but a few among the many methods by which the debtor may effectually baffle a plaintiff to whom the law denies the *ultima ratio* of arrest, and leaves no remedy but the seizure of property.

2. *If the power of arrest in execution be taken away, the debtor without property will have no inducement to make those efforts by which he now often succeeds in obtaining the means of payment.*

As a debtor without property, and not liable to imprisonment, would have nothing to fear, he could have no motive but a conscientious one, to make any effort for payment of his debts; and there is reason to suppose that the effort would rarely be made. But there can be no doubt that under the existing law, the liability to arrest often acts, even upon the debtor without property, as a powerful stimulus, urging him to exertions by which payment is ultimately produced. His activity is sometimes awakened by the actual pressure of imprisonment, but more frequently and more usefully by the apprehension of that event. The resources which he explores, it is in the



nature of things impossible fully to specify. In some cases they appeal to the feelings of relatives; and when persons so connected with him are led, by motives of affection, and not by selfish considerations of family pride, to yield their assistance, they have certainly much reason to complain of being exposed to this species of moral duress. But though there may be many cases, in which the debtor obtains relief by objectionable means, it is apprehended that, in a still greater number of instances, his diligence is directed into proper channels. Friends will frequently have sufficient confidence to make the required advance without reluctance, and the confidence will often be well placed. Even strangers will occasionally advance money upon the security of a bond with responsible sureties; and this the debtor may be able to give without possessing property. Besides these particular resources, it may be material to allude to a whole class derived from the skill or labour of the debtor, as applied to the art, profession, or calling which he exercises, and which he often knows how to make available for the supply of a present exigency, though otherwise destitute of funds.

3. *If the power of arrest in execution be taken away, the burthen and risk of realising the property of the debtor will be constantly thrown upon the creditor, instead of being incumbent, as they ought to be, upon the debtor himself.*

A creditor who has obtained judgment for money due, ought in justice to receive immediate payment. In the present state of the law such payment is often made; for either the fear, or the actual pressure of arrest, induces the debtor in many cases, to provide himself with money by a sale of his property, or by other means, and to tender it, without delay, in satisfaction of the judgment; but if arrest be abolished, this will rarely happen, as the chief motive for such activity will have ceased to operate. The plaintiff will almost invariably be driven to issue an execution, under which he will have to find out the defendant's property, to seize and bring it to sale; and this implies the employment of agents, the outlay of money, and a considerable protraction of the time of payment. In all such cases too he incurs material risk of coming into contact with property claimed by some third person, and of becoming involved by the circumstance in litigation, and exposed to ultimate loss.

4. *The abolition of arrest in execution will encourage the practice of contracting debts improvidently, or with the direct purpose of defrauding the creditor, and will also encourage the debtor to dissipate property which ought to be applied to payment of his debts.*

The practices just mentioned all notoriously exist under the present system; and there is reason to suppose, that since the establishment of the Insolvent Court they have been much on the increase; but they have hitherto been not without check. The debtor is in some measure restrained by the liability to arrest, which involves the imprisonment of his person for a

certain period of time; the necessity of surrendering his estate upon oath, as the only condition upon which his freedom can even then be obtained; and the danger of being ultimately remanded by the Insolvent Court, if convicted of fraudulent conduct. No part of this restraint can be withdrawn without danger. If insolvency should cease to draw after it the imprisonment of the person, there would be nothing but a regard for character, or a sense of duty, to deter men from fraud or improvidence in contracting debt, nor any motives but these to induce them to apply money to the payment of debt, instead of devoting it to self gratification. But it is not upon such motives that lawgivers can implicitly rely for the enforcement of legal rights; and there is even reason to think that their influence (such as it is) would be weakened by the very change of law contemplated. For the abolition of imprisonment for debt would seem to derogate in some degree from the sacredness of the debtor's obligation, and give countenance to the opinion, that insolvency ought to be considered as "a misfortune and not as a crime."

Although the learned serjeant has nearly exhausted the subject in the preceding summary of objections, and those stated p. 388, we present our readers with the following observations from a Correspondent, who has maturely considered the several details of the subject, and whose practical knowledge, as we have reason to believe, entitles him to attention.

In considering the best mode for amending a settled Law affecting the interests of the country, and in making a material alteration in an existing practice, the prevalents of long established custom should be borne in mind, and the general character of the community well considered, in order that any change that may be contemplated should be effected in such a manner as not, too precipitately, to shake the present habits and institutions of the country; and more especially in any such change, should the interests of the commercial classes be strictly attended to, by whose prosperity the faith of the country is chiefly to be maintained.

There is nothing in the Law of Debtor and Creditor, of so much importance to the latter as the law of arrest, and the power to detain a defaulters and make him, by good bail, give security for the amount of his debt; and it is with the intention of upholding the rights of a creditor to do so; that these remarks are offered.

As we continue to become enlightened, so the wisdom of our ancestors is impeached; though if their measures and those of the present day were placed in the scale of sound sense, the balance would often preponderate in favour of the former: and numerous as the alterations in the Common Law have been within the last four years, it still appears that we must be perplexed with others, the effect of which will almost entirely annul all former enact-

ments, and render the law more complicated than ever.

The Law of Arrest is in effect simply this; that when one person owes a just debt to another, the creditor has the option of suing his debtor either by serviceable or bailable process; and the latter is more frequently resorted to when the debtor's disposition appears to be fraudulent, or when the creditor will by personal confinement of the debtor, have a prospect of receiving some security for his debt, which would in all probability be granted, in order to regain his liberty, when the mere circumstance of a serviceable writ would be treated with indifference: and were it not for this protection, one-third part, at least, of the present trade of the country, would be diminished; for it is well known, that in this as well as other great commercial kingdoms, the capital is for the most part artificial, and any measure that would have a tendency to destroy that capital, must be attended in the outset with innumerable difficulties.

Those difficulties will be inevitably increased from the first and second clauses of the proposed measure, in which holders of bonds, bills of exchange, and promissory notes, in the event of default, will not be held in fear of a bailable writ, but simply a ten day rule for judgment, and which judgment, when obtained, is to have the effect of an assignment of sufficient property to pay the claim: thus will the drawer of a bill be compelled to ascertain carefully, in the first instance, the probable value of the acceptor's effects at two, three, or four months hence, knowing that by any unforeseen change in his circumstances at that period, he will be unable to obtain the amount.

Again, as regards a Bond, the words proposed are imperative, that after a ten days' notice of a rule, the defendant *shall* find security, to be approved by an officer of the Court, to prevent final judgment being signed. How often does it happen that a bond, bill, or note have been fraudulently obtained, and on going to trial, such facts are disclosed as cause a jury to find for the defendant?

The present measure also seems unjust towards a defendant who may have a good defence and be enabled to defeat a plaintiff's claim. True, it may be argued, that before this rule can be obtained a positive affidavit must be made of the defendant having drawn a bill, or made a note, so as to authorise such a rule being drawn up; but even if that be so, it is the undoubted right of any person, according to the constitution of the country, to be allowed a time to defend any unjust claim that may be made upon him.

This observation is made in anticipation of the extensive abuse likely to result from so speedy a way of obtaining possession of a person's goods. Taking into consideration the immense business transacted through the medium of bills, the proposed measure will tend to check their circulation, and by that means considerably diminish the present extent of trade; and certainly it appears to me that the present law, as it stands modified, is but a proper protection for the commercial interests, and that

such provisions as are contained in the proposed bill are uncalled for and decidedly impolitic.

The other clauses of the bill merely appear to relate to Bankruptcy, (namely, those from 15 to 83 inclusive,) comprising assignments for the benefit of creditors, powers to create commissioners, official assignees, ushers, registrars, *cum multis aliis*, in fact, an echo of the present bankrupt law. There is likewise too much power proposed to be given by the bill to the magistrates, a class of gentlemen very much respected, but generally speaking, not possessing sufficient sound legal knowledge to discriminate on such matters as this bill would empower them to do.

With regard to the reasons that, it is assumed, render this measure necessary, a few words may now be said. The Law of Arrest appears to be considered in the hackneyed phrase, "a disgrace to the Statute Book," which allegation has been made, not by any large majority of men of experience, but principally upon the exparte statements of discontented debtors, who, having been consigned to "durance vile" for frauds upon their creditors, conceive themselves harshly treated in being deprived of their personal liberty; and though perhaps from exaggerated remarks in the public press a few ("hundred?") letters had reached the honourable framer of the bill, it is nevertheless manifest that the great body of commercial men are in favour of the present law; and this opinion appears unquestionable, from the many thousands of bailable writs that are issued in the course of every year.

Even when the discretionary power of arrest is made use of by a creditor, and the debtor is unable to find bail, and is taken to prison, if he is honest, and his debts have arisen from unforeseen misfortune, there is a relief provided for him by appeal to the Insolvent Debtors' Court, where, on making an assignment of the whole of his estate and effects to the proper officer, the Court has power to discharge him; and he then enters the world afresh, and in the conscientious belief that his prior dealings had been fair and honest, and with the hope that by industry and frugality, he may be re-established in the estimation of society.

In how many instances is the bailable writ rendered strikingly efficacious, by stopping the career of the spendthrift, and placing an effectual restraint upon extravagance? How often does it happen, that a bailable writ is the means of recovering a sum of money which a serviceable writ would have had no prospect of doing? And how frequently does the fear of incarceration cause a debtor to find means for payment of his just creditor, which but for that he had never contemplated doing?

With respect to the abuse of this power, so much complained of, there are no doubt some instances of abuse in this as well as every other law and privilege; and it is extraordinary that so great a number of actions should be commenced by bailable process, if it were not considered a salutary and protective one; for it must be evident that the parties exercising that power do not, at least in the vast majority of

instances, sue their debtors by that process, for the purposes of oppression. One important fact must also be borne in mind by those who think a man can be arrested with impunity—that an affidavit must be made, alleging the the amount due, and the nature of the consideration, before a bailable writ can issue, for the contents of which affidavit the deponent is responsible; and should it turn out that the plaintiff had no probable reason for arresting the defendant, an action will lie against him for false arrest, as well as in some instances for perjury. Thus there is a protection for the debtor as well as for the creditor; and with such a power who can have reason to complain of the harshness of the present law? It may be important to add, that very few are the instances of actions for malicious arrest—shewing the justness of the power exercised by the creditor, in seeking the most speedy and safe mode for recovering his debt, by detaining the person of his debtor.

Thus has it been my endeavour to shew that the present state of society, its pecuniary relations, and its mode of dealing, cannot be maintained unless some protection is given to industrious tradesmen in humble life, as well as to the merchant in high life, by continuing to them the power of detaining their debtor's person when considered necessary, they at the same time well knowing the consequence of an improper exercise of it, and the penalties attached thereto; and having that protection, the debtor has but little cause to complain; and being honest and unable to meet his engagements, he must rely upon that which seldom fails—the general good feeling of creditors.

One word to the profession at large. It is to a part of its members, in a great measure, that the present bill is owing: those, I mean, who live by malpractice and the plunder of others, parties who frequently ruin those whom misfortune has placed in their hands, and who are unjustly consigned to prison to satisfy some trivial debt, and there to remain until the Insolvent Debtors' Act grants them a temporary relief. Such are the parties who have caused the outcry for this measure, to the injury of the fair trader; and it is hoped that the honourable portion of the profession will unite together to procure for the country at large, those measures which may cause the law to be more favourably appreciated, and to root out that portion of the profession who exercise the power entrusted to them in an oppressive manner.

These remarks have been made without any feelings of prejudice, and are unbiased by any undue regard for the legal profession; for it always has been, and will still continue to be, the policy of the respectable practitioner, to facilitate any measure having for its object the sincere and useful amendment of the law: therefore, my dissent from this bill has been given, not from a belief that if carried into effect it will injure the profession, but from a conscientious impression that it will be useless, and greatly injure the commercial interests of the country.

J. W. D.

## INDIAN LAW REFORM.

From a work just published, on "India, its State and Prospects," by Edward Thornton, Esq. we extract the following from the chapter on the Judicial System of that Country, in which there are some remarks not inapplicable to the progress of legal matters in this country at the present time.

"The causes are conducted by native pleaders called vakeels. They draw the pleadings and examine the witnesses, but it is not customary for them to address the Court. Some of these pleaders are said to display considerable acuteness; but the situation is not considered a respectable one, except in the Superior Courts. The vakeels are appointed by the respective Courts, and are liable to be punished for malpractices, by fine or dismissal. The fees of these officers are regulated by law, but the principle of remuneration appears extraordinary. The vakeel receives a per-centage upon the amount claimed, which the suitor is obliged to deposit in Court before the pleader does any act. At the close of the suit the amount is paid over to the vakeel, subject to certain deductions, at the discretion of the Court, where the case has not been fully proceeded in. On the first 5000 rupees, the vakeel is allowed five per cent. On sums exceeding that amount, a diminished per-centage is allowed, up to 80,000 rupees, beyond which the vakeel's fee is fixed at 1000 rupees, which it is in no case to exceed. Among the reforms which will, in all probability, be introduced in the practice of Indian judicature, a better method of remunerating the services of the pleader may be anticipated. The duties which he is called upon to perform, when the amount in litigation is large, may often be less difficult and less laborious than those which devolve upon him when the sum contended for is comparatively small. To reward him munificently in the former case, and scantily in the latter, is offering a premium upon idleness and negligence in the conduct of causes of small amount."

"In every age there are some prevailing opinions which pass current upon the mere strength of clamour, and which the enlightened legislator must carefully examine previous to adoption. In our own day, there are some errors afloat on the subject of the administration of the law, which like most popular errors are mixed with a small portion of truth, from which they derive their plausibility and currency. There are two assertions which are constantly repeated by a certain class of reasoners, or non reasoners, with such a degree of confidence as if they were self-evident truths, and at the same time with such an assumption of sagacity as if they were new discoveries. These are, that the administration of justice should be cheap, and that it should be speedy. These assertions cannot be met by a flat denial; but a little examination will shew, that in the unqualified manner in which they are advanced, they are calculated to lead

to consequences rather mischievous than beneficial. The promise of *cheap* justice is very tempting; but then we ought to be sure that the promise will be fulfilled. If instead of cheap justice, we only get cheap law, we shall have small occasion to rejoice. If disputes could be decided without any expense, it might be well: but lawyers will not take the trouble of studying the law for the mere pleasure of administering it; and having studied it, they will not give their time and labour, either in deciding causes or preparing them for decision, without remuneration. The amount of remuneration will, in a great measure, determine the amount of talent, information, and even of integrity, that shall be brought to the task. If higher emoluments can be commanded by talent in any other profession, talent will not find its way into the law; and no man will consume his days and nights in the acquisition of legal knowledge, if his reward is to be altogether inadequate to his labour. Integrity, it was observed by one of the witnesses before the Parliamentary Committee, is, in some sense, "a purchasable article." He is most likely to preserve it who is removed from temptation. If a judge or a legal practitioner be but indifferently paid, he may think it not worth while to keep a conscience; but when his emoluments are large, and their continuance dependent upon his good conduct, his interest and his duty draw the same way. To place the judge above temptation, and even above suspicion, is indispensable. But this will not be sufficient, unless the advocates and agents, who are required in the conduct of suits, are sufficiently rewarded. We see in our own country, that the higher class of attorneys are the more respectable, not only in point of circumstances, but in point of character. The lower part of the profession are at once a disgrace and a scourge to the country. In India it appears to be the same. The vakeels in the superior courts are respectable; in the inferior they are not. As a general rule, to keep men respectable, you must keep them above want; you may pay judges at a cheap rate, but their quality will be proportioned to their price; and stupid, ignorant, and corrupt judges are always dear enough. Under no system of law can professional advice and assistance be altogether dispensed with. You may have that, too, at any price; but if you would secure ability, knowledge, industry, and faithfulness, you must offer such terms as will command these qualities. The course of justice, then, cannot be very cheap: the charges necessary to secure its purity must ever prevent its being so. If law be rendered very cheap, it will be inefficient and corrupt. Instead of affording protection, it will become an instrument of oppression and wrong. Much has been said of the advantages of placing law within the reach of the poor. For the most part, they are much happier in keeping out of it; and it seems to be forgotten, that where the parties are in different circumstances, the rich man is generally the plaintiff, and the

poor man the defendant. The former is sometimes deterred from proceeding by the apprehension that he may gain nothing but a bill of costs. Take away this fear, and actions will be multiplied to an enormous extent. Is it necessary, in India, to stimulate the litigious propensities of the natives?

"The other demand, that justice should not only be cheap but *speedy*, must, like its fellow, not be conceded without some considerable qualification. There must be sufficient time for bringing the case properly before the court; sufficient time for hearing it calmly and deliberately, and sufficient time for weighing and considering its merits; and afterwards, if the parties are dissatisfied, sufficient time for consideration on appeal, or, if necessary, for a new trial. Complaints of the law's delay are so ancient and universal, that we may almost conclude that a considerable portion of delay is inevitable. Even this, like the expense of law, is not without its counterbalancing advantages. It affords time for accommodation, and disposes men to accede to it. If this be not enough to justify, it is something to extenuate the evil of delay. In many cases, time will enable a defendant to meet the claim of his creditor, which he could not satisfy, if pressed at once. Men frequently say one thing whilst they intend another; and when creditors cry out for speedy justice, they mean speedy judgment and execution."

We hope soon to take a fuller notice of that part of Mr. Thornton's work to which we have referred. Indeed the whole chapter is worthy of the most attentive perusal by every lawyer as well as legislator; and judging from this part of the author's labours (on which we lay some claim to competency of judgment), we do not hesitate to pronounce the volume as one of great value and importance to every one connected with our Indian empire, or interested in its prosperity and good government.

## PUBLICATIONS OF THE RECORD COMMISSIONERS.

### INTRODUCTION TO DOMESDAY BOOK.

The following statements in the Preface of Sir Henry Ellis, will explain the nature of the general introduction to Domesday Book, under the direction of the Commissioners of Public Records.

"The general introduction to Domesday Book, here presented to the reader, was first written in 1813: since which time the writer of it has not ceased to amass every kind of information calculated to throw light upon the more important contents of the record. The labour thus bestowed, coming to the knowledge of his Majesty's Commissioners upon the records of the kingdom, they were pleased, in

the beginning of 1833, when they ordered Mr. Cooper's account of the public records to be published in an octavo form, to direct that the introduction to Domesday, with such improvements as had occurred to the author, should be reprinted in the same shape, so as to form a continuation of that work; and that three indexes should be added: the first, of the tenants *in capite*, which was ordered to include the *taini*, *ministri*, holders of manes in towns, and other persons whose names, not appearing in the head-titles at the beginning of the counties, had been omitted in the index of tenants *in capite* published by his Majesty's Commission in 1816: a second index was ordered, of the persons who had held land in the times of King Edward the Confessor and King Harold, including all individuals noticed in the record as holders of land, (whether as allodial or under tenants, as they can occasionally only be distinguished,) previous to the formation of the Conqueror's Survey; and a third, of the persons in actual possession as under tenants in 1086, the year in which it is evident that the survey was actually made.

"These indexes have been carefully formed, and all passages of the record, calculated to throw light upon the changes and holdings of lands, noted in the margin; as well as all instances of the hereditary descent of land from those who had had possession in the Saxon time. Short comments also have been added in the margins of all the indexes, upon the names of particular individuals. These throw occasional light on the state of the kingdom in the time of King Edward the Confessor, and still more, upon the history of the persons who formed the Conqueror's Court.

"The utility of these indexes to all persons who may have to consult charters of the tenth and eleventh centuries, will be apparent.

"Subjoined to them is an abstract of the different classes of the population of England at the time of the survey, as far as the record has supplied it; with notices of the burghs, in which many of the deficiencies in Brady's imperfect history of those places are supplied.

"In endeavouring to fulfil the orders of his Majesty's Commissioners, the compiler of these volumes is perfectly aware that, although he has passed years of labour upon Domesday, he has only opened the way to a knowledge of its contents.

"Domesday Book is a mine of information which has not yet been sufficiently wrought. Illustrations of the most important and the most certain kind upon our ancient institutions, services, and tenures of land, are still to be drawn from it; and its metal cannot be exhausted by the perseverance of any single labourer.

"The historian may extract results from it which are in vain sought from other sources. It shows, in detail, the number of years that elapsed before England recovered from the violence attendant on the Norman conquest.

"The annual value of property, it will be found, was much lessened, as compared with the produce of estates in the time of Edward

the Confessor. In general, at the survey, the King's lands were more highly rated than before the conquest; and his rent from the burghs was greatly increased; a few also of the larger tenants *in capite* had improved their estates; but, on the whole, the rental of the kingdom was reduced; and twenty years after the conquest, the estates were, on medium, valued at little more than three-fourths of the former estimate.

"From Domesday too it will be seen, that the oppression of our ancient tenures has been overrated; many of them being at that early period converted into money payments.

"It is difficult to form a judgment which shall be exactly supported by evidence, as to the manner in which the distribution of the lands of England was made among the Conqueror's companions. Many years had elapsed between the time of the grants and the taking of the survey; and many of the greater tenants, it will be readily believed, had married heiresses, and joined other lands to those they had at first received.

"The process, however, seems to have been, that a circuit of a larger or a less extent, according to the rank, the services, or the number of the followers brought into the field, was given to the greater chieftains, who, having retained the lion's portion for themselves, distributed the rest in a similar manner, and in due divisions, according to the claims of the parties, upon the survivors of the officers and men who had fought beneath their several banners. The persons thus enfeoffed holding as securely and as independently of the tenants *in capite* as the tenants *in capite* held of the King.

"Exclusive of a few interpolations, the names which fill what is called the Roll of Battle Abbey, will, for the most part, be found among the undertenants of the survey.

"But some entries present themselves in which the forfeitures of a later day may be discovered; more especially in the lands which were seized from Gamelbar, Merlesuain, and the other Saxon chieftains of the north, after the suppression of the rising in 1069; and in those of Waltheof, Earl of Huntingdon and Northampton, who was betrayed in 1074. In the persons who possessed the larger share of the estates of the northern lords at the time of the survey, we probably see the generals by whom they were defeated.

"A patient comparison of Domesday Book with the registers of our earliest abbeys, is the surest way to accomplish its thorough illustration: and this is to be effected, not merely by the examination of charters, and partial surveys, but by the scattered details of an historical kind with which many of them abound, as the following pages will occasionally show.

"After the desolation of the Norman conquest, for such it was, many remnants of the greater families of the Saxon time found no asylum but in the cloister; some are traced as monks, and some obtained the rule of monasteries. Leuric, abbat of Peterborough, was nephew to Leofric, Earl of Mercia; Waltheof, son of

Godpatric, Earl of Northumberland, was abbat of Groyland; Elsi, abbat of Ramsey, had been a favorite in the three courts of King Edward the Confessor, King Harold, and King William; Ethelwold, abbat of St. Benet of Hulme, according to John of Oxnepe's Chronicle, had been Harold's admiral. So that the monasteries became not only the refuge of those who best knew the griefs and changes of their country, but, as the residences of men of letters, the sole depositories of all that could be preserved of history.

"No archives but those of our ancient ecclesiastical establishments throw light, to any great extent, upon the Domesday survey."

## SELECTIONS FROM CORRESPONDENCE. No. XCV.

### NEW RULES OF PLEADING.—EJECTMENT.

To the Editor of the Legal Observer.

Sir,

Feeling obliged to your correspondent "Discipulus" for pointing out, in the two last new works on the Practice, a disagreement between Chitty's Archbold and Price's Practice (see p. 399); I also am disposed to extend the inquiry to another still more important discrepancy on a similar subject, namely, the same question as to *ejectment*.

Mr. Chitty states, p. 612, that "It should first be premised that the rules of M. T. 3 W. 4; extend only to *personal* actions commenced by the process prescribed by the Uniformity of Process Act, 2 W. 4, c. 39, and do not extend to *ejectment*," citing 1 C. M. & R. 20, and 2 Dowl. 690. Taking that to be so, he observes afterwards, p. 630, "It may be here *again* observed, that the recent rules of H. T. 4 W. 4, prescribing the form of an issue; &c. do not apply to *ejectments*," and he retains the old form (forms, p. 444), adding, in a note, "The recent rules, &c. are not applicable to an *ejectment*." So, in p. 445, he retains the *placita*, *imparlance*, and *formal defence*.

But a difference of still greater consequence is to be found between these two writers, in treating of the *consent rule*, *appearance*, and *delivery of plea*, which is a matter of every day occurrence to practitioners, and therefore of the greatest practical importance. Mr. Price states the practice to be different in each Court; and particularly that in the King's Bench, the *appearance* being entered and the *consent rule* marked by the *Filacer*, it should be left with the plea at a Judge's chambers, notwithstanding the new rules, whereas in *both* the other Courts it must be delivered to the opposite attorney. And he says, "Filing common bail is now exploded;" but for that he gives no authority. Mr. Chitty, on the contrary, p. 623, insists on common bail, and makes no such distinction in the practice of the three Courts; but says, that the rule in the King's Bench and Exchequer (forms, 483), if by bill, must be to file common bail.

These are really, Sir, such important differences, in what may be termed the daily practice, that I hope you may be the means of deciding, "where doctors disagree." Excuse the length of this letter, on the score of the importance of every question on the new practice, and the anxiety with which we all look for whatever is to be found about it, in works of any claim to authority.

A CASUAL EJECTOR.

### NEW RULES OF PLEADING.—REPLEVIN.

Sir,

The subject of Pleading and Practice, brought under consideration by "Discipulus" in your Number for 14th March, is new, and deserves attention. It does appear that Mr. Chitty is of opinion that *replevin* is not within the new rules as to pleading; but it should seem to me for one, that Mr. Price's opinion to the contrary is the more correct; for, on referring to the rules, they expressly state (besides speaking of *avowries* and *cognizances*) that *replevin* is *within the rules*. See Rule 5.

I perceive that the reason given by Mr. Chitty is, that *replevin* is not a suit "commenced by process prescribed by the Uniformity of Process Act, and therefore, *perhaps*, the warrants of attorney should be continued;"—but I question whether the rules referred to are so to be confined to proceedings under that act—and whether they are not to be taken to be *general*, and to apply to all pleadings; because they are made in consequence of the passing of the 3 & 4 W. 4, c. 42, "for the further amendment of the Law and the better advancement of Justice," without reference to and independently of the Uniformity of Process Act. Another question may be asked, whether there is any reason why these rules should not have place in actions of *replevin*? and indeed, on the other hand, if there is any reason why they should?—so putting it on the ground of propriety or convenience. It is either way a thing of much importance to know whether Mr. Chitty or Mr. Price is right or wrong: they are both names entitled to consideration in respect of experience; but this is a point, at present, on what may perhaps be not improperly termed *this side of experience*.

The profession will be obliged to you for setting them right in this matter if there is any doubt upon it; or at least for bringing it into notice, and submitting it for discussion and inquiry.

I have looked into Mr. Price's book, and do not see anything there on the subject of *replevin*; and Mr. Tidd does not touch on this point.

I shall be glad if some abler hand may address you upon this question. Perhaps Mr. Chitty or Mr. Price will favor us with their reasons for their different opinions, if they do differ in opinion.

A. B.

## LIST OF SHERIFFS, UNDERSHERIFFS, AGENTS, AND LONDON DEPUTIES, FOR 1835.

<i>Counties, &amp;c.</i>	<i>Sheriffs.</i>	<i>Under Sheriffs.</i>	<i>London Agents and Deputies.</i>
Bedfordshire . . .	Charles James Metcalfe, of Roxton, Esq.	Alexander Sharman, Bedford.	<i>Meggison and Co.</i> , 3, King's Road.
Berkshire . . .	Bartholo. Wroughton, of Woolley Park, Esq.	Morley and Godfrey, Abingdon.	<i>Norton and Chaplin</i> , 3, Gray's Inn Square.
Bristol (city of) . . .	{ James Norraway Franklyn and William Killigrew Wait, Esqrs.	{ Ody Hare, Bristol.	{ <i>Bridges and Mason</i> , 28, Red Lion Square.
Buckinghamshire . . .	{ The Right Hon. Sir Gore Ouseley, of Hall Barn Park, bart.	{ A. Tindal, Aylesbury.	{ <i>Porter and Nelson</i> , New Court, Temple.
Cambridgeshire and Hunts.	John Fryer, of Chatteris, Esq.	Wing and Jackson, Wisbech.	<i>Thomas Wing</i> , South Square.
Canterbury (city of) . . .	T. T. Pope, Gent.	R. M. Mount, Canterbury.	G. and T. Brace, Surrey Street, Strand.
Cheshire . . .	Jas. Heath Leigh, of Grappenhall Lodge, Esq.	Hostage, Northwich.	<i>John Froggatt</i> , 16, Clifford's Inn.
Chester (city of) . . .	John Kearsley and — Rogers, Gents.	John Finchett Maddock, Chester.	Philpot and Co., Southampton Street.
Cinque Ports . . .	His Grace the Duke of Wellington.	Thomas Pain, Dover.	Egan and Waterman, Essex Street, Strand.
Coventry (city of) . . .	Jos. Howe and Thos. Cope the younger, Esqrs.	Richard Dewes, Coventry.	<i>Wells and Gilbertson</i> , 12, Cook's Court.
Cornwall . . .	John Buller, of Morval, Esq.	Lynce, Liskeard.	<i>Willitt</i> , 18, Essex Street.
Cumberland . . .	Richard Ferguson, of Harker Lodge, Esq.	William Nanson, Carlisle.	<i>Bridges and Mason</i> , 28, Red Lion Square.
Derbyshire . . .	{ Ashton Nich. Every Mosley, of Burnaston House, Esq.	{ William Eaton Mousley, Derby.	{ <i>Few &amp; Co.</i> , 28, Henrietta St., Covent Garden.
Devonshire . . .	Sam. Trehawke Kekewich, of Peamore, Esq.	Ralph Sanders, Exeter.	<i>Rhodes and Beyer</i> , 63, Chancery Lane.
Dorsetshire . . .	Sir Henry Digby, of Minterne Magne, Knt.	Fooks and Goodden, Sherborne.	<i>Cuswile and Enfield</i> , Southampton Buildings.
Durham . . .	William Lloyd Wharton, Esq.	Thomas Griffith, Durham.	James Griffith, Raymond Buildings.
Essex . . .	{ George William Gent. of Moyn's Park, Steeple Bumpstead, Esq.	{ E. R. Porter, New Court, Temple.	{ <i>Porter and Nelson</i> , New Court, Temple.
Exeter (city and county of) . . .	Charles Henry Turner, Esq.	Richard Bishop, Exeter.	John Walker, 13, New Inn.
Gloucestershire . . .	Henry Wenman Newman, of Clifton, Esq.	John Burrupe, Gloucester.	<i>White and Whitmore</i> , Bedford Row.
Gloucester (city of) . . .	Fred. Woodcock & Jas. Hen. Dowling, Esqrs.	Wilton, Gloucester.	G. P. Wilton, 16, Gray's Inn Square.
Hampshire . . .	Henry Weyland Powell, of Foxlease, Esq.	Woodham and Seagrim, Winchester.	<i>Hicks and Braikenridge</i> , Bartlett's Buildings.
Hertfordshire . . .	Richard Webb, of Donnington Hall, Esq.	James Holbrook, Ledbury.	<i>Ricknell and Co.</i> , Lincoln's Inn New Square.
Hertfordshire . . .	William Robert Baker, of Bayfordbury, Esq.	James Nicholson, Hertford.	<i>Harkins and Co.</i> , New Boswell Court.
Kent . . .	John Ward, of Holwood, Esq.	Wildes, Maidstone.	<i>Palmer and Co.</i> , Bedford Row.
Kingston-on-Hull (town and county of the town of) . . .	{ John Eggington, Esq.	{ Thomas Holden, Hull.	{ Hicks and Marris, 5, Gray's Inn Square.
Lancashire . . .	Thomas Clifton, of Lytham Hall, Esq.	Rawstorne and Wilson, Preston.	<i>Wiglesworth and Riddale</i> , 5, Gray's Inn Sq.
Leicestershire . . .	William Herrick, of Beaumanor, Esq.	Craddock, Loughborough.	<i>Williamson and Hill</i> , Verulam Buildings.
Lincolnshire . . .	{ Thos. Earle Welby, of Allington Hall, Esq.	{ Ostler, Grantham. Acting under-sheriff, Mr. Dudding, Lincoln.	{ <i>W. Mason</i> , 22, Cursitor Street, Chancery Lane.
Lincoln (city of) . . .	John Stephenson and Frederick Kent, Esqrs.	Richard Mason, Lincoln.	Willis and Co., Tokenhouse Yard.
Lichfield (city and county of the city of) . . .	{ Thomas Dunn, Gent.	{ Francis Eggington, Lichfield.	{ <i>Laurence and Taylor</i> , Old Fish Street, Doctort's Commons.

London	Alexander Raphael and John Illidge, Esqrs.
Middlesex	Ditto
Monmouthshire	Charles Marriott, of Dixton, Esq.
Newcastle-upon-Tyne	John Mellar Chapman, Esq.
Norfolk	Hudson Gurney, of Keswick, Esq.
Norwich (city of)	William Chambers and John Marshall, Esqrs.
Northamptonshire	Lewis Loyd, of Overstone Park, Esq.
Northumberland	Bertram Mitford, of Mitford castle, Esq.
Nottinghamshire	Christopher Nevile, of Thorney, Esq.
Nottingham (town of)	Charles Leavers and John Birkhead, Esqrs.
Oxfordshire	John Fane, of Wormsley, Esq.
Poole (town of)	Richard Ledgard, Gent.
Rutlandshire	Godfrey Kemp, of Belton, Esq.
Shropshire	Sir Baldwin Leighton, of Lotton, Bart.
Somersetshire	James, Bovill, Esq.
Southampton (town of)	W. Manning Dodington, of Horsington, Esq.
Staffordshire	Edward Monckton, of Somersetford, Esq.
Suffolk	Robert Sayer, of Sibton Park, Esq.
Sussex	James Shudi Broadwood, of Lyne House, Esq.
Warwickshire	Charles Dixon, of Stanstead Park, Esq.
Westmoreland	The Hon. Charles Bertie Percy, of Guy's Cliffe.
Worcestershire	The Earl of Thanet.
Worcester (city of)	Sir Edward Blount, of Mawley Hall, Bart.
Wiltshire	John Wheeley Lea, Gent.
Yorkshire	Henry Seymour, of Knoyle, Esq.
York (city of)	Richard Henry Roundell, of Gledstone, Esq.
	Seth Agar and William Scawin, Gents.
Anglesea	Wm. Hughes, of Plas Llandyfdrydog, Esq.
Carnarvonshire	John Morgan, of Weeg, Esq.
Denbighshire	Sir Rob. Hen. Cunliffe, of Acton Park, Bart.
Flintshire	Charles Blancy Trevor Roper, of Plasterg, Esq.
Merionethshire	John Henry Lewis, of Dolgryn, Esq.
Montgomeryshire	Hugh Davies Griffiths, of Llechweddgarth, Esq.

NORTH WALES.

Charles Pearson, Broad St Buildings.	Charles Markham, Northampton.	William Hurst, Nottingham.	William Hughes, jun. Amwlch.
Beni. Hardwicke, Laurence Lane.	P. Ellison, Newcastle.	Samuel Cooper, Henley on Thames.	William Jones, Ghan Beuno.
Adamson, Newcastle-upon-Tyne.	Mr. R. Falkner. — Acting Und. Sh.	Robert Henning Parr, Poole.	J. V. V. Horne, Denbigh.
Taylor and Son, Norwich.	Mr. Brewster, Nottingham.	Charles Hall, Uppingham.	Roberts, Mold.
Rackham, Norwich.	William Hurst, Nottingham.	Thomas Salt, Shrewsbury.	J. J. Williams, Dolgelly.
Charles Markham, Northampton.	Samuel Cooper, Henley on Thames.	Edward Coles, Taunton.	Williams, Vownog, Llanfyllin.
P. Ellison, Newcastle.	Robert Henning Parr, Poole.	J. C. Sharp, Southampton.	
Mr. R. Falkner. — Acting Und. Sh.	Charles Hall, Uppingham.	George Keen, Stafford.	
William Hurst, Nottingham.	Thomas Salt, Shrewsbury.	Crabtree, Halesworth.	
Samuel Cooper, Henley on Thames.	Edward Coles, Taunton.	George Keen, Stafford.	
Robert Henning Parr, Poole.	J. C. Sharp, Southampton.	Smallpiece, Guilford.	
Charles Hall, Uppingham.	George Keen, Stafford.	Wm. Hen. Palmer, Bedford Row.	
Thomas Salt, Shrewsbury.	Crabtree, Halesworth.	Thomas Heath, Warwick.	
Edward Coles, Taunton.	George Keen, Stafford.	George Hall, Appleby.	
J. C. Sharp, Southampton.	Smallpiece, Guilford.	Gillam and Son, Worcester.	
George Keen, Stafford.	Wm. Hen. Palmer, Bedford Row.	Thomas France, Worcester.	
Crabtree, Halesworth.	Thomas Heath, Warwick.	M. T. Hodding, Salisbury.	
George Keen, Stafford.	George Hall, Appleby.	Hartley and Dudgeon, Settle.	
Smallpiece, Guilford.	Gillam and Son, Worcester.	Seymour, York.	
Wm. Hen. Palmer, Bedford Row.	Thomas France, Worcester.		
Thomas Heath, Warwick.	M. T. Hodding, Salisbury.		
George Hall, Appleby.	Hartley and Dudgeon, Settle.		
Gillam and Son, Worcester.	Seymour, York.		
Thomas France, Worcester.			
M. T. Hodding, Salisbury.			
Hartley and Dudgeon, Settle.			
Seymour, York.			

Secondary's Office, 5, Basinghall Street.	Charles Pearson, Broad St Buildings.	Charles Markham, Northampton.	William Hurst, Nottingham.	William Hughes, jun. Amwlch.
Messrs. Burchell, 24, Red Lion Square.	Beni. Hardwicke, Laurence Lane.	P. Ellison, Newcastle.	Mr. R. Falkner. — Acting Und. Sh.	William Jones, Ghan Beuno.
Jenings and Bolton, Elm Court, Temple.	Adamson, Newcastle-upon-Tyne.	Mr. R. Falkner. — Acting Und. Sh.	Mr. Brewster, Nottingham.	J. V. V. Horne, Denbigh.
Flexney, New Boswell Court.	Taylor and Son, Norwich.	William Hurst, Nottingham.	Samuel Cooper, Henley on Thames.	Roberts, Mold.
Lytton, 22, Essex Street.	Rackham, Norwich.	Samuel Cooper, Henley on Thames.	Robert Henning Parr, Poole.	J. J. Williams, Dolgelly.
Yallop, 77, Basinghall Street.	Charles Markham, Northampton.	Robert Henning Parr, Poole.	Charles Hall, Uppingham.	Williams, Vownog, Llanfyllin.
George H. King, Tokenhouse Yard.	P. Ellison, Newcastle.	Charles Hall, Uppingham.	Thomas Salt, Shrewsbury.	
Meggison and Co., 3, King's Road.	Mr. R. Falkner. — Acting Und. Sh.	Thomas Salt, Shrewsbury.	Edward Coles, Taunton.	
Caper, Raymond Buildings.	Mr. Brewster, Nottingham.	Edward Coles, Taunton.	J. C. Sharp, Southampton.	
Taylor & Collinson, 28, Gt. Jas. St. Bedford Row.	William Hurst, Nottingham.	J. C. Sharp, Southampton.	George Keen, Stafford.	
Berkely, 3, Lincoln's Inn, New Square.	Samuel Cooper, Henley on Thames.	George Keen, Stafford.	Crabtree, Halesworth.	
Holme and Co., New Inn	Robert Henning Parr, Poole.	Crabtree, Halesworth.	George Keen, Stafford.	
Alban and Benbow, Stone Buildings.	Charles Hall, Uppingham.	George Keen, Stafford.	Smallpiece, Guilford.	
Harkins and Co., New Boswell Court.	Thomas Salt, Shrewsbury.	Smallpiece, Guilford.	Wm. Hen. Palmer, Bedford Row.	
Messrs. Dyne, 61, Lincoln's Inn Fields.	Edward Coles, Taunton.	Wm. Hen. Palmer, Bedford Row.	Thomas Heath, Warwick.	
Jones and Ward, 1, Bedford Row.	J. C. Sharp, Southampton.	Thomas Heath, Warwick.	George Hall, Appleby.	
White and Whitmore, 11, Bedford Row.	George Keen, Stafford.	George Hall, Appleby.	Gillam and Son, Worcester.	
White & Borrett, Frederick Place, Old Jewry.	Crabtree, Halesworth.	Gillam and Son, Worcester.	Thomas France, Worcester.	
Jenkins and Abbott, New Inn.	Smallpiece, Guilford.	Thomas France, Worcester.	M. T. Hodding, Salisbury.	
Palmer & Co., Bedford Row.	Wm. Hen. Palmer, Bedford Row.	M. T. Hodding, Salisbury.	Hartley and Dudgeon, Settle.	
Newton, 14, South Square, Gray's Inn.	Thomas Heath, Warwick.	Hartley and Dudgeon, Settle.	Seymour, York.	
Gray, Staple Inn.	George Hall, Appleby.	Seymour, York.		
Alban and Benbow, Stone Buildings.	Gillam and Son, Worcester.			
Becke, Son, and Collison, 19, Essex Street.	Thomas France, Worcester.			
Hillier and Co., 6, Raymond Buildings.	M. T. Hodding, Salisbury.			
Wigginorth and Ridgale, 5, Gray's Inn Sq.	Hartley and Dudgeon, Settle.			
Norton and Chaplin, Gray's Inn Square.	Seymour, York.			

J. and W. Lowe, Tanfield Court, Temple.
Weeks and Gilbertson, 12, Cook's Court.
Wm. Dean, 6, Palsgrave Place, Temple Bar.
Milne and Co., Temple.
Price and Bolton, New Square, Lincoln's Inn.
Blower and Visard, 61, Lincoln's Inn Fields.



## LIST OF SHERIFFS, UNDERSHERIFFS, AGENTS, AND LONDON DEPUTIES, FOR 1835.

## SOUTH WALES.

Breconshire	Sir Edward Mamilton, of Trebushun, Bart.
Carmarthenshire	Ed. Rose Tynno, of Llangenneck Park, Esq.
Carmarthenshire (county of)	William Williams and John Thomas, Gents.
borough of)	Thomas Davies, of Nantwrilan, Esq.
Cardiganshire	John Dillwyn Llewelyn, of Penllergare, Esq.
Glamorganshire	Nicholas Roach, of Cocheaton, Esq.
Pembrokeshire	Thomas Williams, of Crossfoot, in the parish
Radnorshire	of Chisow, Esq.

S. Church, Brecon.  
J. B. Jeffries, Carmarthen.

{ Ditto.

Oliver Lloyd, Cardigan.  
Thomas Thomas, Swansea.  
William Lock, Tenby.  
Charles Powell, Ashfield, near Rhay-  
der.

Taylor, Roscoe, & Farther, Bedford Row.  
Clarke & Metcalf, 20, Lincoln's Inn Fields.

{ Ditto

Hawkins & Co., 2, New Boswell Court.  
Perkins and Frumpton, 1, Gray's Inn Square.  
Norris, Allen, & Anthony, 45, Gt. Ormond St.  
White and Whitmore, 11, Bedford Row.

The Agents whose names are printed in italics are appointed Deputies, to grant Warrants, receive Rules, Orders, &c. in London, under 3 & 4 W. 4, c. 42, s. 20, except for Lancashire, for which County they receive Rules, &c. but do not grant Warrants.

Application should be made to the London Agents, who are not yet appointed Deputies, prior to transmitting Writs, as further appointments may be made.

## LEGAL ANTIQUITIES.

## ANTIQUITY OF IMPRISONMENT FOR DEBT.

For the support of credit and benefit of commerce, the Statute of Acton Burnell, (11 Edward 1), provided, that a merchant who wished to secure his debtor before the mayor of London, York, or Bristol, there to acknowledge the debt and day of payment, the recognizance was to be entered on the roll by the clerk, who was to make a writing obligatory, to which the seal of the debtor was to be affixed. If the debtor did not keep his day of payment, then the mayor should immediately cause his chattels and burgages to be sold to the amount of the debt. If the debtor had no moveables, then *his body was to be taken and kept in prison*, until he or his friends had made agreement with the creditor. By the Statute of Merchants, the lands of the debtor as well as his goods were to be delivered to the creditor by a reasonable extent, to hold them until such time as the debt was wholly levied, when the land was to be restored.

It is remarkable, that among the remedies furnished by the statute for civil injuries, 25 Edward 3, c. 17, the process of *capias* and *exigent* in a writ of debt were given. Lord Coke supposes, that at Common Law there could be no arrest of body in case of debt, only in trespass *vi et armis*. Co. 2 Inst. 394; but Mr. Reeves is of a different opinion, which he grounds on the account given of process by Bracton. "We find," says the writer, "in the reign of Henry 3, that the process in all personal actions was as follows: If the party did not appear on the summons, then he was attached by pledges, and afterwards by better pledges. If he still did not appear, the sheriff was commanded, *quod habeas corpus*, to take the body. If the sheriff returned *non inventus*, there issued a *distingas, per terras et catalla*; after that another *distingas*, commanding him also to take the body; after that another *distingas, ne manum apponat*; and lastly, a writ to take the lands and chattels into the King's hands. Thus there might be one summons, two attachments, a *capias* (as it was afterwards called), and four distresses." 2 Reeves, Hist. 439.

It appears so early as the reign of Henry 2d, that the writ of *capias* for taking the body of the defendant, was an accustomed writ. Glan. l. 4, c. 13.

## INCORPORATED LAW SOCIETY.

## MEMBERS ADMITTED,

March, 1835.

Hall, John Charles, 64, Lincoln's Inn Fields.  
Mullins, Edward, Took's Court, Cursitor St.  
Smith, Philip Protheroe, 1, King's Bench Walk.  
Pope, George, 12, Gray's Inn Square.  
Palmer, Charles James, Bedford Row.

Clarke, William Tredway, 51, Lamb's Conduit Street.  
Harding, George, 57, Great Russell Street.  
Tindal, Acton, Aylesbury, Bucks.  
Hunt, William Oakes, Stratford-on-Avon.

## LIST OF NEW PUBLICATIONS.

Peel's Acts, and all the Criminal Statutes from 1 G. 4, to the Present Time, including the Criminal Clauses of the Reform Act; with Forms. Third Edition. By J. F. Archbold, Esq. In 2 Volumes. Price 12. 8s. boards.

A Treatise on the Disposition and Conveyance of Lands entailed, and of the Estates and Interests of Married Women, and on the several Acts regarding the Fines and Recoveries, &c. By J. Tamlia, Esq. Price 5s. 6d.

An Essay on the Estates of Trustees. By C. Fletcher, Esq. Price 4s. 6d. boards.

Reports of Cases relating to Magistrates determined in the Court of King's Bench in Trinity and Michaelmas Terms, 1834. By S. Nevile, and W. N. Manning, Esqrs. Vol. II, Pt. III. Price 5s.

A General Digest of the Law, for 1834, containing all the Reported Decisions in all the Courts, with the Rules of Court from 1 W. 4. By H. Roscoe, Esq. Price 18s. boards.

## BANKRUPTCIES SUPERSEDED.

From Feb. 20, to Mar. 17, 1835, both inclusive, with Dates when gazetted.

Bailey, Joseph, Sparsholt, Hants, Cattle & Sheep Salesman. Mar. 13.  
Dickinson, James, Nottingham, Lace Manufacturer. Mar. 13.  
Gowar, Tho., Greenwich Road, Kent, Coachmaker. Mar. 17.  
Hicks, John Phillimore, & Charles Edw. Hicks, Eastington, Gloucester, Clothiers. Mar. 18.  
Key, Wm., London, Wall, Cheesemonger. Mar. 10.  
Le Couteur, James, Peter's Port, Guernsey, Woollen Draper. Mar. 13.  
Porter, Wm., Gower Street, & Keppel Street, Surgeon & Apothecary. Feb. 27.  
Solomon, Isaac, & Benjamin Aaron, Bristol, Woollen Drapers, Tailors, & Salesmen. Feb. 24.  
Salmon, Wm., Liverpool, Victualler. Mar. 17.

## BANKRUPTS.

From Feb. 20, to Mar. 17, 1835, both inclusive, with Dates when gazetted.

Ayres, Tho., Tooley Street, Southwark, Silversmith & Jeweller. Abbot, Off. Ass.; Desborough & Co., St. Elizabeth Lane. Feb. 20.  
Archer, Wm., Manning, Essex, Grocer. Sporting, Colchester; Stevens & Co., Little St. Thomas Apostle. Feb. 24.  
Allen, Leonard, Pinner Green, Middlesex, Innkeeper. Edwards, Off. Ass.; Howard, Norfolk Street, Strand. Feb. 27.  
Adams, William, jun., Brown's Lane, Spitalfields, Brewer. Amory & Co., Throgmorton Street; Cannan, Off. Ass. Feb. 27.  
Askham, Wm., sen., Eckington, Derby, Surgeon & Apothecary. Butterfield, Gray's Inn Square; Potter, Rotherham. Mar. 6.  
Abraham, Phineas, Briggate, Leeds, York, Jeweller & Watchmaker. Sydney, New London Street; Podes, Leeds. Mar. 10.

Alport, James, Stourbridge, Worcester, Upholsterer & Cabinetmaker. Orme & Co., Temple; Collins, Stourbridge. Mar. 10.  
Bladon, Leonard, Hanway Street, Oxford Street, Tailor and Draper. Groom, Off. Ass.; Mossely, Great Portland Street. Feb. 20.  
Bette, John, Epithal, near Windsor, Berks, Victualler. Ellis, George Street, Mansion House; Wilmers, Off. Ass. Feb. 24.  
Bryce, Geo., Manchester, Pawnbroker. Adlington & Co., Bedford Row; Casson, Manchester. Feb. 24.  
Barnard, Eliza, Little Baddow, Essex, Cattle & Sheep Salesman. Biggs, Southampton Buildings, Holborn; Goldsmid, Off. Ass. Feb. 27.  
Burrow, John, & Tho. Burrow, Wanley, Stoke-upon-Trent, Stafford, Grocers. King, Wellington Square; Dutton, Hanley. Feb. 27.  
Bird, Philip, Cowbridge, Glamorgan, Grocer & Tea Dealer. Stevens, Gray's Inn Square; Halsefield, Bristol. Feb. 27.  
Baynton, Tho., Cheltenham, Gloucester, Dealer in Horses. Bridges & Co., Red Lion Square; Collins, Ross, Herefordshire. Feb. 27.  
Buswell, James, & Rich. Wood, Derby, Joiners & Cabinet Makers. Fry & Co., Henrietta Street, Covent Garden; Mosley & Co., Derby. Mar. 3.  
Brown, Geo., Marlborough, Wilts, Ironmonger. Matthews, Hungerford, Berks; Bishop, Serjeants' Inn, Chancery Lane. Mar. 3.  
Bates, John, Bellevue Place, Clapham, Surrey, Linen Draper. Green, Off. Ass.; Meyer, Whitebrook. Mar. 6.  
Barnard, Rich., Hollingbourne, Kent, Paper Maker. Davies, Serjeants' Inn, Fleet Street; Thompson, Off. Ass. Mar. 10.  
Bulman, James, Great Tower Street, Porter & Ale Merchant. Belcher, Off. Ass.; Blunt & Co., Liverpool Street. Mar. 10.  
Bunpus, Tho., jun., Northampton, Grocer. Austin & Co., Raymond Buildings; Howe, Northampton. Mar. 13.  
Browne, Edmund, Brompton Grove, Middlesex, Merchant. Hurley, Gray's Inn Square, Goldsmid, Off. Ass. Mar. 17.  
Burnell, James, jun., Wortley, York, Clothier. Wigglesworth & Co., Gray's Inn; Richardson, Leeds. Mar. 17.  
Crick, Ebenezer, Leamington Priory, Warwick, Printer. Platt & Co., New Bowell Court, Carey Street; Wimburn & Co., Chancery Lane. Feb. 24.  
Cambridge, Lemuel, Bristol, Ship Owner & Merchant. White & Co., Bedford Row; Bevan & Co., Bristol. Feb. 24.  
Cox, Peter, Fairford, Gloucester, Builder. Tarr, Stow-on-the-Wold; Prichard & Co., New Bridge Street, Blackfriars. Feb. 24.  
Collinson, John, Thomas Street, Stamford Street, Blackfriars, Hat Manufacturer. Abbott, Off. Ass.; Bowden & Co., Aldersbury. Feb. 27.  
Coates, John, Manchester, Merchant. Hatfield & Co., Manchester; Johnson & Co., Temple. Feb. 27.  
Crosby, Samuel, Coventry, Dyer. Brooking & Co., Lombard Street; Phillips & Co., Bristol. Mar. 3.  
Cole, Robt., Basinghall Street, Scrivener & Picture Dealer. Hind & Co., Throgmorton Street; Clark, St. Swithin's Lane, Lombard Street. Mar. 10.  
Cartes, Jeremiah, Coleman Street, Woollen Warehouseman. Abbott, Off. Ass.; Tilson & Co., Coleman Street. Mar. 10.  
Cross, Wm. Henry, Leeds, York, Victualler. Davidson, Lawrence Lane; Messrs. Lee, Leeds. Mar. 10.  
Cooper, John, Liverpool, Joiner & Builder. Blackstock & Co., Temple; Bradner, Liverpool. Mar. 10.  
Crowther, Tho., Openshaw, & Ardwick, Lancaster, Joiner & Builder. Adlington & Co., Bedford Row; Chas., Manchester. Mar. 10.  
Coake, Richard Barnes, Worcester, Stone Mason. White & Co., Bedford Row; Holdsworth & Co., Worcester. Mar. 17.  
Darrington, Joseph, Fordingbridge, Southampton, Plumber & Glazier. Bailey & Co., Essex Court, Temple; Cooper, Salisbury. Feb. 20.  
Dakin, Wm. Henry, Heligman, Norfolk, Innkeeper. Clarke & Co., Lincoln's Inn Fields; Bechworth & Co., Norwich. Feb. 20.  
Dean, Rich., Milner Place, Lambeth, Builder. Catlin, My Place, Holborn; Waikman, Off. Ass. Feb. 24.  
Dawe, Tho., East Stonehouse, Devon, Painter & Glazier. Brooking & Co., Lombard Street; Steworth, Devonport. Feb. 24.  
Deacon, Joseph, Reeth, York, Corn Factor & Meal & Flour Dealer. Addison, Verulam Buildings, Gray's Inn; Hamer, Richmond. Mar. 3.  
Ereleigh, Jos. Savory, & William Ereleigh, Union Street, Southwark, Hatters. Lowles & Co., Hutton Court, Threadneedle Street; Turquand, Off. Ass. Mar. 17.  
Fox, John, Liverpool, Wine Merchant. Taylor & Co., Bedford Row; Lowndes & Co., Liverpool. Feb. 27.  
Forster, Tho., & Robert Forster, Trygal, Northumberland, Flour Dealers. Meggison & Co., King's Road, Bedford Row; Wilson, Murpeth. Feb. 27.  
Flook, Moses, Kingwood-hill, Gloucester, Currier & Shoemaker. White & Co., Bedford Row; Bevan & Co., Bristol. Mar. 3.  
Goulden, John, Hedge Street, Hackney Road, Carpenter & Victualler. Norton, New Street, Bishopsgate Street; Clark, Off. Ass. Feb. 24.

- Goodburn, John, Brighton Place, New Kent Road, Silver-smith & Jeweller. *Wright*, Upper North Place, Gray's Inn Road; *Waikman*, Off. Ass. Feb. 27.
- Hawkeley, Charles, Liverpool, Merchant. *Maudsley*, Liverpool; *Adlington & Co.*, Bedford Row. Feb. 20.
- Huddleston, Samuel, Manchester, Saddler. *Bower*, Chancery Lane; *Dickins*, Manchester. Feb. 24.
- Hoyle, Joshua, Manchester, Victualler. *Johnson & Co.*, Temple; *Higson & Son*, Manchester. Mar. 3.
- Hogg, Benj. jun., Armsley, Leeds, York, Cloth Manufacturer. *Weggsworth & Co.*, Gray's Inn; *Richardson*, Leeds. Mar. 3.
- Holden, John, Bacup, Whalley, Lancaster, Cotton Spinner & Manufacturer. *Johnson & Co.*, Temple; *Brackenbury*, Manchester. Mar. 8.
- Hatton, Peter, Heaton Norris, Lancaster, Innkeeper. *Back*, Verulam Buildings, Gray's Inn; *Lingard & Co.*, Heaton Norris. Mar. 8.
- Hider, Ann, Oxford, Kent, Cheesemonger & Grocer. *Edwards*, Off. Ass.; *Sandom*, Dunster Court, Mincing Lane. Mar. 10.
- Holloway, Wm., Dorset Street, Clapham, Surrey, Brewer. *Groom*, Off. Ass.; *Barber & Co.*, Fumival's Inn. Mar. 10.
- Hicks, John Phillimore, & Charles Edward Hicks, Eastington, Gloucester, Clothiers. *Abbott*, Off. Ass.; *Lefty & Co.*, King Street, Cheap-side. Mar. 13.
- Hickson, Anthony, Doncaster, York, Grocer. *Forbes & Co.*, Ely Place, Holborn; *Mason & Co.*, Doncaster. Mar. 13.
- Herbert, Thomas, Brynmawr, Llanelli, Brecon, Grocer. *Richardson & Co.*, Bedford Row; *Gabb*, Abergavenny. Mar. 17.
- Jacobs, Simon, Manchester, Merchant. *Denison & Co.*, Manchester; *Walsley & Co.*, Chancery Lane. Feb. 20.
- Jorie, James, Bagliff, Holywell, Flint, Ale & Porter Brewer. *Meyrick & Co.*, Red Lion Square; *Oldfield*, Pendre, Holywell. Feb. 24.
- James, Wm., Brighton, Sussex, Grocer. *Bennett*, Brighton; *Dax & Co.*, Lincoln's Inn Fields. Mar. 3.
- King, Stephen, Hinnerton Street, Knightsbridge, Baker. *Casley*, Guilford Street; *Turquand*, Off. Ass. Feb. 20.
- King, John, Cambridge, Grocer. *Metcalfe*, jun., Wisbech; *Messrs. Baxter*, Lincoln's Inn Fields. Feb. 20.
- Knappe, Edw., Walsoken, Norfolk, Cattle Salesman. *Clarke & Co.*, Lincoln's Inn Fields; *Beckwith & Co.*, Norwich. Mar. 3.
- Lockwood, Geo., & Wm. Wilson, Liverpool, Merchants, & Factors. *Norris*, Liverpool; *Norris & Co.*, Great Ormond Street. Feb. 20.
- Lupton, Jonathan, Leeds, York, Oil Merchant. *Davidson*, Lawrence Lane; *Messrs. Lee*, Leeds. Feb. 24.
- Mitchell, Wm., Strand, Lodging-house Keeper. *Becher*, Off. Ass.; *A. Beckett*, Staple Inn. Feb. 24.
- Merchelen, Joseph, Clifton, Gloucester, Publisher. *Crosby*, Bristol; *Bicknell & Co.*, Lincoln's Inn. Feb. 24.
- McCarthy, Dan, Tho., Bristol, Stationer & Dealer in Rags. *White & Co.*, Bedford Row; *Brown & Co.*, Bristol. Feb. 27.
- Mitchell, Samuel, Sheffield, York, Merchant & Factor. *Walter & Co.*, Synod's Inn, Chancery Lane; *Brown & Son*, Sheffield. Mar. 17.
- Nixon, Henry, Warwick Lane, London, Carpenter & Builder. *Gibson*, Off. Ass.; *Wise*, St. Swithin's Lane. Feb. 20.
- Nippin, Geo., Northampton, Upholsterer. *Blackstock & Co.*, Temple; *Cooke*, Northampton. Feb. 24.
- Norman, John, Burslem, Stafford, Innkeeper. *Harding*, Burslem; *Smith*, Chancery Lane. Mar. 13.
- Pinson, John, Norwich, Linen Draper & Haberdasher. *Newton*, Norwich; *Taylor & Co.*, Bedford Row. Feb. 24.
- Pope, John Wm., Wood Street, Cheap-side, Carpet Warehouseman. *Dangfield*, Lincoln's Inn Fields; *Brinton*, Kidderminster; *Lackington*, Off. Ass. Feb. 27.
- Parnham, Benj., High Street, Shadwell, & Liverpool, Sail Maker & Slopeller. *Gibson*, Off. Ass.; *Downes & Co.*, Fumival's Inn. Mar. 6.
- Penn, John, Leamington, Warwick, Bookseller. *Poussett & Co.*, Great Winchester Street; *Johnson*, Off. Ass. Mar. 13.
- Pleace, Wm., Bristol, Victualler. *Peters & Co.*, Bristol; *Hicks & Co.*, Bartlett's Buildings, Holborn. Mar. 13.
- Retemeyer, Myrhard, Liverpool, Salt Dealer. *Chesler*, Staple Inn; *Davenport*, Liverpool. Feb. 24.
- Ray, Geo. Alex., Ramsgate, Kent, Lodging-house Keeper. *Edwards & Co.*, Park Place, St. James's. Mar. 8.
- Rowed, Henry, & John Wm. Greenhields, New Bond Street, Tailors. *Walker*, Southampton Street, Bloomsbury; *Graham*, Off. Ass. Mar. 13.
- Roberts, David, Pwllheli, Carnarvon, Draper. *Johnson & Co.*, Temple; *Brackenbury*, Manchester. Mar. 13.
- Rothwell, Tho., Manchester, & Blackburn, Cotton Manufacturer. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Mar. 13.
- Robinson, John, & Wm. Robinson, Burslem, Stafford, Common Brewers & Colour Manufacturers. *Harding*, Burslem; *Smith*, Chancery Lane. Mar. 13.
- Smith, Wm. Sanderson, Newcastle-upon-Tyne, Draper. *Atkinson*, Bridge Street, Blackfriars; *Johnson*, Off. Ass. Feb. 20.
- Slee, Noah, Princes Street, Stamford Street, Blackfriars, Leather Dresser. *Green*, Off. Ass.; *Goren*, South Molton Street, Hanover Square. Feb. 27.
- Swift, Isaac, & Geo. Swift, Lane End, Stoke-upon-Trent, Stafford, Tailors & Drapers. *Tooke & Co.*, Bedford Row; *Clark*, Lane End. Mar. 3.
- Shields, John, Bridge Road, Lambeth, Surrey, Wire Worker. *Edwards*, Off. Ass.; *Wigley*, Pickett Street, Strand. Mar. 10.
- Sandon, Frederick, Newgate Street, Druggist. *Franklin*, Walbrook Buildings; *Goldmid*, Off. Ass. Mar. 13.
- Smith, John, Wheatley, Oxford, Surgeon & Apothecary. *Green*, Off. Ass.; *Randall & Co.*, Walbrook Buildings. Mar. 13.
- Shirley, Benj., Blackfriars Road, Surrey, Wholesale Dealer in Earthenware, & Retail Dealer in Shoes. *Galbraith*, South Square, Gray's Inn; *Johnson*, Off. Ass. Mar. 17.
- Turnbull, John, Tynemouth, Northumberland, Cabinet Maker & Grocer. *Lowrey*, Pinner's Court, Broad Street, London, & at Tynemouth. Feb. 27.
- Taylor, Wm., Great Yarmouth, Norfolk, Surgeon, Apothecary, & Druggist. *Reynolds & Co.*, Great Yarmouth; *Clarke & Co.*, Lincoln's Inn Fields. Mar. 3.
- Tipper, Samuel, Whitebrook Mills, Landogo, Monmouth, Paper Manufacturer. *Lefty & Co.*, King Street, Cheap-side; *Canan*, Off. Ass. Mar. 10.
- Turner, James, Honiton, Devon, Tea Dealer & Grocer. *Gibson*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. Mar. 10.
- Thomas, Nathaniel, Manchester, Upholsterer & Cabinet Maker. *Chesler*, Staple Inn; *Chapman*, Manchester. Mar. 10.
- Trotter, Robt., Tynemouth, Northumberland, Ship Owner & Merchant. *Lowrey*, Pinner's Court, Broad Street, London, & at Tynemouth; *Webster*, North Shields. Mar. 17.
- Taylor, Wm., Gateshead, Durham, Builder. *Gibson*, Newcastle-upon-Tyne; *Swain & Co.*, Frederick's Place, Old Jewry. Mar. 17.
- Voss, John, Weymouth & Melcombe Regis, Dorset, Grocer. *Clark*, Weymouth; *Capes*, Raymond Buildings, Gray's Inn. Feb. 20.
- Whitehouse, Tho., Balsall-Heath, King's Norton, Worcester, Brickmaker, & Keeper of a Licensed Retail Beer-Shop. *Sparrier & Co.*, Birmingham; *Norton & Co.*, Gray's Inn. Feb. 20.
- Williams, Joseph, Salford, Lancaster, Innkeeper & Common Brewer. *Barratt*, jun., Manchester; *Hume*, St. Mildred's Court, London. Feb. 24.
- Wright, Benj., Liverpool, Ship Broker & Merchant. *Worthington*, Liverpool; *Leather*, Liverpool; *Taylor & Co.*, Bedford Row. Feb. 27.
- Williams, John, Chester-le-Street, Durham, Linen & Woollen Draper. *Raynes*, Norfolk Street, Strand; *Messrs. Marshall*, Durham. Feb. 27.
- West, Joseph, Keate Street, Christchurch, Middlesex, Victualler. *Henderson & Co.*, Leman Street, Goodman's Fields; *Graham*, Off. Ass. Mar. 3.
- Wright, John, Newcastle-upon-Tyne, Jeweller & Silversmith. *Bell & Co.*, Bow Churchyard; *Seymour*, Newcastle-upon-Tyne. Mar. 3.
- Wilkes, Wm. Villers, Birmingham, Factor. *Clarke & Co.*, Lincoln's Inn Fields; *Culmore*, Birmingham. Mar. 3.
- Wilmot, Sam. Reynolds, Bristol, Brewer. *Hicks & Co.*, Bartlett's Buildings, Holborn; *Wellington*, jun., Bristol. Mar. 3.
- Williams, Wm. Pitt, & Wellington Williams, Wexley, Kent, Drapers & Grocers. *Becher*, Off. Ass.; *Warne*, jun., Leadenhall Street. Mar. 10.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Feb. 20, to Mar. 17, 1835, both inclusive,  
with Dates when gazetted.

- Boys, William, & Richard Anstice, Bridgewater, Somerset, Attorneys at Law & Solicitors.
- Phelps, Robert, & Thomas Jones, Ledbury, Hereford, Attorneys, Solicitors, & Conveyancers. Mar. 6.
- Richardson, Charles, & James Beaumont, Golden Square, Attorneys & Solicitors. Mar. 6.
- Weatherby, Edward, & William Crapps Kitchener, Newmarket, Cambridge, Attorneys, & Solicitors. Mar. 10.

# The Legal Observer.

VOL. IX.

SATURDAY, APRIL 4, 1835.

No. CCLXII.

— "Quod magis ad nos  
Pertinet, et noscitur melius est, agnoscitur.

HOMER.

## THE SCIENCES, IN THEIR RELATION TO THE PRACTICE OF THE LAW.

We are gratified by the appearance of a work\*, which appears to us to be the production of an enquiring and amiable mind, intended at once to enforce the necessity for the lawyer's extending his views to other matters than the mere technicalities of his profession, and to give him the means of doing it. It has indeed been said, that the law is jealous of all rivals; that she demands the undivided affection of her adherents. "The lady Common Law," says the old maxim, "must needs lie alone;" and we are willing to admit, that in the first years of the student's career, he would do well to give the law his exclusive attention; but, as time rolls on, when he is well grounded in principles;—when the outline is all sketched in,—he may be permitted to take, as his recreation, the study of other matters, which may possibly be of direct service to him in his profession, and at any rate, will expand and renovate his mind. But let us hear what our author says of the advantages of some acquaintance with the sciences to the members of our profession.

"The slightest consideration will shew the advantage of even a mere outline to the practical lawyer. Every phenomenon or occurrence in the universe is the result of the pre-established laws of nature; and the most common occurrences of life, mental or physical, cannot be conducted on any other principles; therefore the whole practice of the lawyer must have

some relation to the laws of matter or mind; and although a man may, by practice and routine, succeed in a certain degree in the affairs of life, yet a knowledge of those laws of nature will elevate his character and enable him to act with decision, arising from a consciousness of knowing the reason of things. In many cases, in our courts of jurisprudence, although the laws of nature be not the main question in dispute, but the existence, past or present, of some fact or phenomenon resulting from them; yet a knowledge of those laws must be of great assistance, and in some cases almost indispensable, to the practitioner of the law. No man can attend the Courts of *Nisi prius*, even for a few hours, without hearing the principles of experimental philosophy applied and discussed; not perhaps in technical language, or with the ostentation and parade of science; but still they are the same principles; and a little knowledge would sometimes save witnesses from perjury, and suitors and their professional agents from defeat and confusion. The laws of nature would often prove the impossibility of facts which may be attempted to be proved by falsehood and perjury. The credibility or incredibility of a fact or phenomenon, can only be ascertained by a knowledge of previous discovered facts or laws; and the credulity of an individual, whether judge, barrister, or attorney, will depend on the amount of his knowledge. An ignorant man does not perceive the accordance or non-accordance of facts with nature; and often believes that which is possible to be impossible, and that which is impossible to be possible, and even probable. But the well-informed man has a reason for his belief, and distrusts every thing which would be contrary to the known laws of nature, however strongly supported by testimony. In proving the facts of a case, then, it is evidently often essential to be acquainted with science, in order to know what is necessary to be proved, and what kind of evidence should be produced, as well as to know when any attempt is made to impose. There are, moreover, some few cases in which the very prin-

\* Elements of the Logical and Experimental Sciences, considered in their relation to the Practice of the Law. Henry Butterworth. 1835.

ciples of nature are the points in dispute. The arts and manufactures of this country are intimately connected with the sciences; and, as we advance in the career of improvement, this connexion must become more intimate. And not only in trials at *nisi prius* is a knowledge of what has been discovered of the laws and constitutions of nature desirable, but in many other cases, as in the drawing up of certain documents connected with the arts, commerce, mining, and the like, an acquaintance with the various ways in which such knowledge has been previously applied, is indispensable. Ignorance is culpable, for it may give rise to great injury to the client. Take, for example, the case of a patent for an invention, and suppose an attorney, ignorant of any science but law, instructed to draw the specification required by law; he neither understands the principles nor the language of the subject on which he is employed, and his instructions to counsel are very deficient, or perhaps incorrect. The specification, when drawn up, is returned to the attorney, who is quite unable to judge of its sufficiency, and the client—often in such case, poor and illiterate,—after paying heavily to the Crown for the exclusive enjoyment of an invention which he promised himself would make his fortune, and after paying the legal expenses he has incurred for security's sake, finds, on his rival manufacturer disputing the matter with him, that his specification is so defective, whether containing too much or too little, that he must give up his patent, and submit to the loss, not only of the anticipated wealth, but of the legal expenses of the litigation and defence of his patent, as well as the costs of obtaining it. Almost every patent for an invention; which should have brought large remuneration to the patentee, has been infringed and litigated, and many of such patents have been set aside. Wherever there is a chance of sharing the benefits of an invention, there will be attempts to infringe the patent. These are some of the cases in which a knowledge of the experimental sciences is useful in the practice of the law; those which are called the pure sciences are pre-eminently so in the study of it, particularly the science of logic, &c. The members of the law have so much to do with reasoning and with words, in using them themselves and construing the meaning in which others have used them, that the science of logic has been universally admitted to deserve from them even more attention than the other sciences."

The author then proceeds to lay down the principal rules of the sciences, the knowledge of which he considers will be found particularly advantageous to the lawyer. In these rules, or in their illustration, he does not pretend to novelty; indeed, if we can trust our recollection, he has frequently adopted the words of some of the popular authors mentioned in his preface, without any more particular reference. The following passage will convey to our readers an

idea of the manner in which some knowledge of the law of motion may be rendered available to practice.

"On the other hand, things remain at rest until moved by mechanical force; thus when a coach or boat is dragged forward, the persons in it find themselves at first thrown towards the hinder part of it. When the carriage or boat advances, they are at first at rest, and it requires that they should be put into the same state of motion as the carriage. In the same manner, a weight suspended by a spring on hoard ship, is seen vibrating up and down as the ship pitches with the waves. It seems to fall as the ship rises, and to rise as the ship falls; but the motion is really in the ship, and the comparative rest is in the weight. When horses or other live stock are shipped, as their bodies remain at comparative rest like the weight, when the ship heaves they cannot keep their footing, and it is necessary that they should be properly slung, to prevent their being injured. In the case of *Laurence v. Aberdeen*, 5 B. & Ad. 107, it appeared that thirty mules, ten asses, and thirty oxen, were shipped, and sailed on the 17th January, 1820, with the animals properly stowed on board; on the 19th January a violent storm arose, which caused the ship to labour and pitch greatly. This lasted without intermission until the 30th, when for the preservation of the ship and cargo, and on account of the damage the ship had sustained, they put into harbour. On the first day of the storm two of the mules, one of the oxen, and five of the asses were killed, being unable to keep their footing, from their inertia, or being at comparative rest, and the pitching of the ship; and the remainder of the animals received such injuries that all of them, except six mules and one ass, died in consequence, before the ship left the harbour. One of the six mules afterwards died before the ship arrived at her port of destination. The case was reserved for the opinion of the Court, as to whether this mortality was excepted by a warranty of 'free from mortality' contained in the policy of insurance on which the action was brought. The Court held, that mortality means, in its ordinary sense, death from natural causes; and judgment was given for the plaintiff. The case of *Garry v. Lloyd*, 3 B. & C. 793, was of a similar nature: three horses, insured from London to Jamaica, were shipped, and they were properly secured in stalls with slings and halters, having sufficient partitions between them, and also a person to attend and take charge of them. On the night they sailed the wind blew very hard, with excessive squalls: the horses, by the labouring of the ship, and from their own inertia, that is, from their bodies being at comparative rest, broke their slings; and one of them, by kicking, broke down the partition between it and the next horse, in consequence of which the remaining partition, by the kicking of the two horses, who were thus brought together, was also broken down. The horses, having then nothing to support them, were unable to stand,

on account of the great rolling of the vessel; and by their kicking, they bruised and hurt each other so much, that about eight o'clock the next morning two of them were found dead, having their necks broken, and being otherwise excessively bruised; the third was in a dying state, and in about an hour and a half afterwards it also died. The slings having been broken, could not be replaced or repaired, on account of the state of the weather, and from the danger of going among the horses, which were then loose and unsupported. No question seems to have been raised as to the sufficiency of the slings, which, from their having to sustain the weight of the horses, on the sudden jerks and swingings caused by pitchings of the vessel, ought to have been of great strength."

We may probably give some further extracts from the work in a future number.

## FURTHER OBJECTIONS TO THE IMPRISONMENT FOR DEBT BILL.

THAT the power proposed to be given to a Judge at Chambers, to determine whether judgment shall be immediately signed, or a trial before a jury be permitted, is objectionable, inasmuch as the large class of cases to which such power applies, will be decided in the Judge's private room on written affidavits, without the benefit of oral examination, and in the presence only of the attorney on each side, or their clerks; and the defendant will thus be deprived of his right of trial by jury in a public court.

That the Bill, in providing a summary and expeditious remedy on bonds, bills, and notes, will work great injustice towards the vast majority of creditors, who supply goods at a fixed period of credit, and who are not accustomed to receive bills of exchange. The property of the debtor will be sacrificed to meet these undue preferences, and the rest of his debts will remain unsatisfied.

That a debtor who, it is feared, will abscond, should be liable to be arrested on the creditor swearing that he verily believes the debtor intends to abscond, and it should not be incumbent on the creditor to prove probable cause for such belief, inasmuch as it may be founded on information communicated by the debtor himself, or on circumstances known only to the creditor, and therefore cannot be given in evidence.

That the intended assignment of the debtor's property to satisfy a single judgment creditor, will destroy the credit of the

debtor, and, by ruining him, injure all his other creditors. The assignment made on the application of a single creditor, should therefore not be limited for his benefit, but extended to all the creditors; and consequently all the additional relief which is now required may be better effected by extending the provisions of the Lords' Act.

That the property of the debtor, seized at the instance of a judgment creditor, should by operation of law, vest in the trustee of his estate; and the assignment should extend to book debts as well as obligations and securities.

That power should be given to the debtor, within a limited period, to satisfy the judgments against him, and supersede the assignment.

That where four-fifths in number and value of the creditors are agreed in accepting a composition for their debts, there should be a provision to compel the rest of the creditors to come into the arrangement.

That the present remedy against debtors should not be taken away without substituting an improved system in its stead. The interest of creditors should be the paramount object, and not the indulgence of debtors.

That although some of the provisions in the bill may be effectual in regard to honest debtors (but for whom the present law is sufficient), the Bill will fail in its object against fraudulent debtors, who being freed from imprisonment, will conceal their property with impunity.

## A JUDGE RETURNING TO THE BAR.

In your Legal Observer for March 7th, we have an interesting article "On the Right of a Judge to return to the Bar;" and the most celebrated instance of a Judge returning and practising at the bar is there stated as that of Sir Robert Heath, 10th year of King Charles 1st. I conceive the case of Danby to be yet more remarkable; it is referred to by Lord Chief Justice Holt, in the celebrated cause of *Coggs and Bernard*, 12 Mod. Rep. 482, when citing another case, 9 Edw. 4, 406; wherein he observes, "that was but a debate at bar. For Danby was but a counsel then, though he had been Chief Justice in the beginning of Edw. 4th, yet he was removed and restored again upon the restoration of Hen. 6, as appears by Dugdale's Chronica Series."

G. G.

## ON THE RIGHT TO RECOVER MONEY PAID UNDER A MISTAKE.

WE shall shortly state the law respecting the recovery of money paid by mistake.

The rule at law generally recognized as to this, is, that if a person pays money by mistake, in ignorance of the law, he cannot recover it; but if in ignorance of the facts of the case, that he can.

Thus, where an underwriter of a policy of insurance upon a ship, having paid the amount of the insurance as for a loss by capture, sought to redeem it,\* on the ground that the assured had not, at the time of effecting the insurance, disclosed to the underwriter a material letter respecting the time at which the ship sailed; but it being proved that before the loss on the policy was adjusted, all the papers, including the letter in question, had been laid before the underwriter, it was holden that he could not recover, for every man must be taken to be cognizant of the law.<sup>a</sup> And where money has been paid by virtue of a legal process,<sup>b</sup> or threat of a suit,<sup>c</sup> it is quite clear that it cannot be recovered, although improperly paid; nor where the transaction has been of an illegal character, and the parties stood *in pari delicto*;<sup>d</sup> nor where the money paid was due in honour and conscience, though not legally recoverable.<sup>e</sup>

But where the facts have been concealed, or even mistaken, the money may be recovered.

Thus, where A, who was indebted to the estate of B., a bankrupt, paid the debt to his assignees without setting off, as he was entitled to do, a sum of money due to himself from the bankrupt, it was holden that A. might recover the money which he had neglected to set off.<sup>f</sup> And in a very recent case,<sup>g</sup> where money was paid under a *forgetfulness* of facts, it was held to be recoverable. The facts were these:

Oldham became a bankrupt in March 1831, and since that time the plaintiffs, with the sanction of the other creditors, carried on, for

their general benefit, the business of calico printers, formerly carried on by the bankrupt. The defendant had been occasionally employed by the assignees to engrave rollers for them for the purposes of the manufactory; and in the month of April, 1832, he sent in his bill, amounting to 142*l.* 7*s.* 6*d.*, for engraving six rollers. A dispute arose between the parties respecting one item (of 45*l.*), included in the bill, to which the plaintiffs insisted they were not fairly subject, the rollers having been badly engraved. Before this dispute was settled, the defendant applied for money on account; and Mr. Lucas (one of the plaintiffs) accordingly paid him, on the 1st and 8th of May, two sums on account, which amounted together to 20*l.* 10*s.* (the sum now sought to be recovered). On the 18th of May, Mr. Lucas, the defendant, and Oldham, the bankrupt, happened to meet at the counting-house of the assignees, and after some discussion between them, the defendant agreed to give up the item of 45*l.* Mr. Oldham then taking up the bill of the defendant, deducted the 45*l.* from the bill, making the balance of 97*l.* 7*s.* 6*d.* instead of 142*l.* 7*s.* 6*d.*; and the defendant immediately signed the account, so altered. On the same day that this arrangement took place, the defendant called on the plaintiff, Lucas, for payment, and Lucas paid him the agreed balance of 97*l.* 7*s.* 6*d.*; and almost immediately after, he sent the defendant notice that when he did so, he had forgotten that he had already paid the defendant the two sums (amounting together to 20*l.* 10*s.*) on account; and that, consequently, he ought, on discharging the balance, to have paid him, not 97*l.* 7*s.* 6*d.*, but only 76*l.* 17*s.* 6*d.*: he therefore required the defendant to return him the 20*l.* 10*s.* The defendant's clerk answered, that the defendant did not consider he had received more than he was entitled to; and the defendant had subsequently refused to pay the sum demanded. Under these circumstances, F. Pollock, for the defendant, contended, that as the money had been paid by Lucas, one of the plaintiffs, voluntarily, and as all the facts were at the time within his knowledge, he could not now recover the money back. Bolland, B., reserved the point, directing the jury to find a verdict for the plaintiffs, if they were of opinion that the real agreement between the parties was, that the full amount of the charge for engraving the rollers was to be deducted from the defendant's bill. Verdict for the plaintiffs, damages 20*l.* 10*s.*

F. Pollock, on the following morning, obtained a rule *nisi* to set aside the verdict and enter a nonsuit, on the ground taken at the trial.

The learned Judges took time to consider the case, and on this day delivered their judgment,—that, as the jury had in effect found that the money was paid by mistake, in the hurry of business, they were of opinion that it might be recovered back, as money had and received to the use of the plaintiffs. They therefore discharged the rule for entering a nonsuit.

<sup>a</sup> *Billie v. Lumley*, 2 East, 469.

<sup>b</sup> *Marriott v. Hampton*, 7 T. R. 269. *Humlet v. Richardson*, 9 Bing. 644.

<sup>c</sup> *Knibbs v. Hall*, 1 Esp. 84.

<sup>d</sup> *Browning v. Morris*, Cowp. 790.

<sup>e</sup> *Turner v. Arundel*, 2 Bla. R. 824.

<sup>f</sup> *Bize v. Dickason*, 1 T. R. 285. See also *Chatfield v. Paston*, 2 East, 471, n., and *Wilkinson v. Johnston*, 3 B. & C. 434.

<sup>g</sup> *Lucas v. Wornuich*, 1 Moo. & Rob. 293.

PRACTICAL POINTS  
OF GENERAL INTEREST.

No. LXXV.

## MERCHANT SEAMAN.

In the following case, the rules are laid down by Chief Justice *Tindal* respecting the extent of the authority vested by law in captains of merchant ships over the seamen. In an action of trespass brought by one of the latter against the former, the evidence was as follows:

The plaintiff was cutting up blubber, off the coast of Japan, and the defendant told him to cut it thinner; that the plaintiff said he could not, that he cut it as thin as any other man in the ship, and yet the captain was always grumbling at him; that upon this the captain abused him, and laid hold of his collar, upon which there were more words, and the chief mate struck the plaintiff; that he then threw down his knife, and said he would not do any more work in a ship where he was so ill-treated; that he went down below, and the captain and mate followed him, and brought him up, and put handcuffs on him, and he was a few hours after taken down into the pantry, and confined there, with irons on his hands and feet, during the night, for nearly four months; that he was on deck walking about in the day time, with handcuffs only on; that at first he was kept on bread and water, and afterwards had two pounds of meat a-week, the men's allowance being one pound a-day each; that in November 1831, he was taken ashore at Wahoo, in the South Seas, and left there, after a communication between the captain and the English consul there. The witnesses stated that at night he could only lie on his back, and could not turn round, and that a man died in a place adjoining the pantry, and the body became very offensive from the bites of cockroaches, and that the men were ordered not to speak to him or give him any of their provisions. It appeared that the plaintiff had, in a fit of anger, stabbed a man, named Chamberlain, several months before, for which he underwent the punishment of cobbing, which punishment, the plaintiff's witnesses said, was suggested by the defendant; but this was denied by the defendant's witnesses. The witnesses for the defendant also proved, that it was understood that no flogging was allowed on board, and that putting in irons was the only punishment which could be resorted to. Several of the crew also swore that they remonstrated with the plaintiff, and asked him to return to his duty; thinking it a shame that he should be idle, while they were working night and day; but that he said, he would be damned if he did any more work on board the ship. It was also proved that the captain himself had several times told the plaintiff he might have the irons taken off, if he would promise to return to his duty, but he refused, and that he employed his time in read-

ing novels and old newspapers, which were lent him by one of the crew. It appeared also that there was not any British consul to be met with till they came to the place at which he was sent ashore. The ship's log was put in, but it only contained three entries—one as to the commencement of the transaction, one as to the diminution of his allowance, and one as to his refusing to take bread and water.

*Tindal*, C. J., in summing up, said,—The question for your consideration will be, whether, under the circumstances, any thing which the captain did to the plaintiff exceeded the just measure of punishment. If it did, you must find your verdict for the plaintiff; if it did not, then you will find for the defendant, for, in point of law, he will be justified. By the common law, a similar power of moderate chastisement is given to the captain of a ship as there is to a parent and a schoolmaster. The late Lord *Tenterden* often observed, that it was always desirable, and indeed the duty of the captain, to institute an inquiry, and have it entered on the log what the result was. It seems to me that it is undoubtedly both his duty and his interest. It is his duty, because, by availing himself of the advice of others, he prevents himself from acting solely on his own feelings, which may be excited; and it is his interest, because it furnishes evidence in his favour to be used on the day of trial; and it is a matter of regret, that a course which is so simple and so useful has not been resorted to in the present case. There are two points for consideration;—first, what was the offence committed? and, secondly, what was the punishment inflicted? I have no hesitation in saying, that the plaintiff's throwing down the knife, and refusing to work, was an offence and a breach of the articles; and if the rest of the crew had done the same, it would wholly have destroyed the venture; and the captain had certainly a right, for the sake of example, to inflict a moderate and proportionate punishment. There is some doubt, on the evidence, as to whether the plaintiff was kept in close confinement for the first ten or twelve days, or had temporary relaxation; but it seems that handcuffs were kept on the whole time, from the 26th of June till November, when they arrived at Wahoo. It does not seem that the offence committed was one likely to affect the existence of order and discipline in the ship, by inducing others to follow his example. There is a considerable portion of the defendant's evidence, which, if you believe it, will go materially to reduce the damages, provided you think the punishment improper, and find your verdict for the plaintiff. You must apply your mind to say whether the plaintiff might have got out by making some concession. For, if so, he cannot claim compensation in damages for that which he might have prevented by his own conduct. *Murray v. Moutrie*, 6 C. & P. 471.



## POWER OF PARTNERS TO BIND EACH OTHER.

By the custom of England, partners have the power of binding one another by their individual acts, as the acceptance of a bill drawn upon the firm, if it concerns the trade; *Pinkney v. Hall*, Salk. 126. Their powers over the stock, such as bills drawn in favour of the firm, are still greater of binding their partners, as one partner may by his indorsement give a title in a bill, although such bill may be given in payment of a separate debt of the partner so acting, if such transaction be without covin or fraud. See *Ridley v. Taylor*, 13 East, 175; *Swan v. Steele*, 7 East, 210. This doctrine, however, has never extended so far as to authorize one partner to bind the other by deed, and the attempt to establish the doctrine was scouted by Lord Kenyon, in *Harrison v. Jackson*, 7 T. R. 207.

How far, then, may this be considered as an attempt by one partner to bind his partner by deed? Suppose the property to be in one partner in trust for the rest, and he having found a purchaser, is proceeding to the completion of the purchase, when a dispute arises respecting—say, the value of timber, and a reference is proposed: can the partner bind his partners by deed to submit to such arbitration? That one partner cannot bind his partners in this way, even in matters arising out of the business of the firm, is fully proved by the case of *Steed v. Salt*, 3 Bing. 101; much less then, I conceive, must his right be to authorize such an act when the property is in the hands of a third party.

Next, let us consider what a party looks to in the purchase of property. If he finds a conveyance to a vendor for value, and nothing appearing on the face of the deeds, or from notice derived *aliunde*, that he is a trustee, then may he complete his purchase; but if on the face of the deeds, or otherwise, he derives notice that his vendor is merely a trustee, he himself becomes nothing better, as he makes himself a party to a breach of trust, without he have the assent of the parties beneficially interested to the property, and capable of giving the requisite assent to the trustee so acting. This brings us fairly to our question, whether the assent of one party will complete the equitable title.

I conceive, the assent of one alone would be insufficient; and this appears to have been the opinion of Lord Rosslyn, in *Smith v. Smith*, 5 Ves. 189. There estates were conveyed to one partner alone, being paid for out

of the partnership fund; but the partners agreed, that the estates should be his in whose name bought, and he be a debtor for the money. His Lordship remarks, "If these estates had only been conveyed to one partner, having been purchased with partnership funds, they would have been part of the partnership property. I take it as a fact agreed, that upon the agreement, if the partnership had been dissolved, the estates would have remained with Robert Smith, in whose name bought; and whether they were worth so much or not, he would have been debtor for the money. If he had sold one of these houses, his sale would have been good, even with notice of their manner of dealing and their transactions, if the fact is true as to the agreement; and no person would have taken the title without the wife joining." Had the party been a trustee for the firm, it is plain what would have been his Lordship's opinion, viz. that the wife's assent would be unnecessary, whereas the assent of the partner would be requisite, otherwise it was no use speaking of the sole power of alienation given by the agreement. That a verbal assent would be insufficient, is plain from section 9 of the Statute of Frauds, requiring that all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same. If such be the case as regards both, can one by his assent in writing bind the other? This power must be either express or implied: that it is not express, will, I think, be readily admitted; is, then, a purchaser justified in implying a power?

Here we may dispose of the cases which have arisen by usage under the Bankruptcy Acts, of allowing the act of one partner to bind the others, as regards proving debts, voting for assignees, signing certificate, &c.; upon which Lord Eldon remarks, 19 Ves. 293, "Where the *bond* is executed by one partner only undertaking to prove that a debt is due to all the partners, and the affidavit is made accordingly by that partner, I cannot decide that such practice, having prevailed ever since the statute, will affect the validity of the commission, and that the *bond* must be executed and the affidavit sworn by all the partners. The course in bankruptcy has been otherwise; in almost all things directed by the statute or by practice, one partner on behalf of all, may prove a debt, vote in the choice of assignees, and sign the certificate. I am therefore bound to suppose the opinion of all my predecessors to have been, that this practice is in compliance with the real mean-

ing of the statute." And again, p. 298, "The result of the act and the practice is, that the issuing commissions being regulated by the fact, that the affidavit and bond of one partner having been uniformly held sufficient; that proof of debts having been always made by one partner for himself and the others, who are not called upon to join; that the choice of assignees, the manner of signing certificates, and various other acts in bankruptcy, being done by one partner in behalf of the partnership, and effect being allowed by the great seal to certificates so signed, and when pleaded at law; I am authorized to say, whatever might have been the proper construction, if this were *res integra*, this series of practice is to be considered as a mass of decision that this is the construction of the act. Upon these grounds, I state this as a point, I am not at liberty to regard otherwise than as judicially decided here through a very long period; that course of decision always acquiesced in, must be understood as the law, and I cannot account for the allowance of pleas of certificates, unless it has been so considered." To the like effect are *ex parte Mitchell*, 14 Ves. 597; *ex parte Hall*, 17 Ves. 62. We may also dismiss the cases where one partner has executed a deed in the presence of his partners; *Ball v. Dunsterville*, 4 T. R. 313; *Burn and Burn*, 3 Ves 578; those being expressly on the grounds of *presence* constituting the act of all.

In 3 Bing. 105, *Best*, C. J. lays it down, "an authority can only be implied for what is necessary to carry on the trade in which the partners are concerned;" and also adds, "to enter into a submission for arbitration, is no part of the ordinary business of a trading firm." The learned Judge has, therefore, helped us thus far on our road, viz. that without it be possible to shew that the ordinary dealings of the firm were such as to make it absolutely requisite for one partner to have this power of binding his co-partner by deed, we may fairly conclude, that as to ordinary trading firms, if a partner cannot bind his co-partner to agree to an arbitration, much less can he bind him as to that which includes such power, viz. a power of sale.

Let us then suppose a firm, who are professedly a partnership for the purpose of buying and selling land by way of trade; Would this raise an implied power of binding the partners by deed? In answer to this, let us consider on what principle it is that partners in general have this power of binding one another. From a general view of

the cases, it may be laid down, that where the act done is in the way of the trade, then the assent of the other partner is presumed. This position applies most strictly where the act done is in the nature of the delivery of articles, the possession of which in themselves gives a title. We have already shewn, that custom has extended this power to signing of bills of exchange, when in connection with the business, and even under particular circumstances when not in connection, such as discounting the bill with a banker; and such cases where there is no reason to suppose the party taking the bill for a separate debt, knew that the assent of the other partner was not obtained. The reason applicable to all these cases is this, that trade would stagnate if such authority was not implied. How, for instance, if a party went into a shop and purchased articles, would he have to act, if it was requisite to make a proportionate payment to each partner? How is he to ascertain the number of partners, the difference of their shares, or the agreement as to their mode of dealing? This must equally apply, whether the amount be 6d. or 600l. The possession of goods, unaccompanied with fraud, carries title with it; and custom has done the like with bills, when relating to the business, and without fraud, even when not so relating. But here has custom stopped; as if a partner guarantee a payment or performance of any act, this, although relating to the business, is not in itself binding on the other partners, unless notified to them, and they do not dissent. This latter point has received a direct decision in *ex parte Nolte*, 2 G. & J. 295. Lord Eldon's opinion upon the matter may be found, 2 Swans. 544. "In *Harrison v. Jackson*, 7 T. R. 207, (above noticed), the question depended in great measure on the nature of the deed. I take it, that that was a deed by which one partner, signing, sealing, and delivering, for himself and his partners, undertook to make a grant: the effect of such deed is very different from the effect of the release." Lord Eldon did not here mean to lay it down as clear, that one partner might bind his co-partner at law by release; for at a subsequent portion of the case, he adds, p. 545. "This case was argued before me upon the question, whether this was a valid legal release; but without advertng to that question, and supposing that it would not be valid in law, still the bill has charged that the defendant agreed to execute a release, and that an assignment was made in performance of that agree-

ment; that will sustain the agreement in equity, if not in a court of law." Mr. Montagu states, p. 21, "a release of partnership debts, executed by one partner, concludes the firm; but this may be considered as explained by what Lord Eldon states, as to its being good in the nature of an agreement; by one on behalf of the others to do a particular act, not that it amounts to an act in itself; and in this light is the usual clause in creditors' deeds inserted, that the signature of one of the firm shall be sufficient. With such clause the deed is no more than an accord on the part of the firm; and to make such deed available at law, satisfaction in pursuance of such accord must be proved. This therefore, is only an indirect power of releasing. As regards joint tenants, *Popham, C. J.*, says, *Cr. Eliz.* 803; 2 Co. 68. "That every act done by one joint tenant in benefit of himself and his companion, is good, as payment of rent to the lord doth discharge the other." Here these are qualified acts, as he adds, "but one joint tenant cannot prejudice his companion as to any matter of inheritance or freehold; but as to the profits of the freehold, the one may prejudice the other, for there is a privity of trust between two joint tenants, and therefore, if one takes all the profits of the land, or the whole rent, &c. the other hath no remedy, for it was his folly to join himself in estate with such a person as would break the trust." In ordinary cases, therefore, we see, that persons being joint tenants, the law does not give an implied power to the one to convey the other's share; and without it he could only give a naked possession. In the absence, however, of any authority to the contrary, I do not think it would be too much to imply such power in the case of persons being partners; expressly trading in land; at any rate, one partner might enter into such an agreement as would be binding on his co-partner to execute. T. O. B.

#### OBSERVATIONS ON THE ENFRANCHISEMENT OF COPYHOLDS.

To the Editor of the *Legal Observer*.  
Sir,

I agree with you that Sir John Campbell's Bill to facilitate the Enfranchisement of Copyholds, will be of comparatively small service. In most of the manors with which I am acquainted, it is the will to enfranchise which is wanting, and not the power; and generally for this reason, that every partial enfranchisement renders the land re-

maining copyhold in the same manor less productive. The only mode, in my opinion, of effecting the object of the public, with justice to both parties, is to compel an enfranchisement by commissioners of all the copyhold and heritable land within a manor, when it is called for by the majority of the parties interested. I am quite ignorant of the grounds on which the Real Property Commissioners arrived at the conclusion that copyhold tenements, being generally of small value, could not afford the expense of commissioners to regulate the terms of enfranchisement. There may be some little difficulty in awarding compensation for life interests, and in estimating the chances of fines and heriots, but not such as a skilful land surveyor could not overcome; and I do not think that to small copyholders the expense of a local commission would exceed the fees of an admittance.

I am afraid that the exercise of the power given by Sir John Campbell's Bill to tenants for life, without the intervention of commissioners or trustees, will produce continual disagreements with the remainder-man. The lord of a manor, who is only tenant for life, will of course wish to secure the fine on the copyholder's admittance, before he enfranchises the tenement; and the copyholder, after having paid his fine, will not be disposed to purchase the enfranchisement, except on terms which would be injurious to the remainder-man of the manor.

It appears that another Bill is to be brought in, to abolish heriots. Whether just compensation will be given for them, remains to be seen; but surely it is not fair to compel the lord to part with a portion of his property, without giving him the choice of selling the whole. The Real Property Commissioners, after recommending this compulsory measure as to heriots, observe, "that if it had been found impossible to indemnify the lord, perhaps this might have been thought a case in which the supposed interest of the individual must give way to the public good." I cannot but express my opinion that this threat should never have been introduced. It is calculated to alarm the owners of manors, and, like every other manifestation of disregard for private rights, to create enemies to the cause of reform.

Something must certainly be done with regard to manorial tenures. They have ceased to constitute that link of property which was their only recommendation; and they are losing the support, as they have long lost the favour, of the Courts of Justice.

R. B.

# SELECTIONS FROM CORRESPONDENCE.

No. XCVI.

## SOLICITOR'S FEE ON PASSING DECREE.

Nr.

CAN you, or any of your numerous Correspondents, inform me for what reason, and by what authority, Clerks in Court uniformly refuse to allow to a solicitor his charge of 13s. 4d. or 6s. 8d. as the case may be, for his charge on attending to pass a Decree or Order, in cases where he does not think it requisite to put his client to the expense of taking an office copy?

The same rule I believe also prevails in refusing a solicitor any remuneration for attending Warrants on taxing Bills of Costs, of which he does not provide himself with copies from the Master's Office.

It would be useless for me to occupy space in the columns of your valuable journal, in stating cases in which, although it is not absolutely necessary that copies should be taken by each solicitor, yet they may respectively think proper, and it may be necessary for the due protection of their clients' interest, that they should attend both the passing of orders and the taxation of bills of costs; and yet by the Six Clerks Office law, the solicitor who does so attend, and actually takes the same trouble as if he put his client to the expense of copies, is defrauded of his just remuneration.

I never have been able to ascertain either the reason of the disallowance, or the authority by which it is made; and if none such exists, the profession ought to resist such a mode of proceeding.

ADVISER.

## UNDER-SHERIFFS' CHARGES.

Mr. Editor,

WILL any of your Readers inform me what was done in the case of the motion to the Court of Exchequer—that an under-sheriff should refund a sum overcharged by him for a warrant?

I was lately charged by a very respectable house, 7s. 8d. for a warrant, which they refused to deliver me, and constituted themselves my unsanctioned agents for sending it down to the officer. Four-pence is the legalized fee by Act of Henry VIII.; 1s., and 2s. 6d., have been paid without objection; but when it comes to 7s. 8d. it is really a serious matter.

A SUBSCRIBER.

## IRREGULAR PRACTITIONERS OF THE LAW.

SIR,—You have already, under the head of "Professional Etiquette," shewn that a great many rules in the profession arise more from etiquette than any positive rule laid down from the bench. As there is no rule against any person puffing himself off to the world as willing to sell his abilities at a lower rate than his neighbour, I think it is high time, in such a case, either that such rule should be made, or

else that the profession at large should set their faces against practices which must bring others to think the profession little better than composed of hawkers and pedlars. With this much, I beg leave now to hand you a circular which was given to me by a gentleman to whom it had been sent. He expressed himself highly disgusted at the idea of such a person being thus allowed to placard the profession, for which he had a great respect, and hoped that some means would be adopted to let the public know that such was not a general practice.

By giving publicity to the nature of this placard, you will enable every legal reader to open the eyes of those who, from seeing such placards, may be inclined to think ill of the profession. This is the utmost that can be looked for, as I do not conceive that the person who thus placards himself, can have much care whether his fee be gained with the approbation of the profession, so as he pockets money.

W. L. D.

## "CONVEYANCING OFFICE."

"The gentleman who conducts this office, not having the advantage of a patron to introduce him, and feeling assured that the days of professional etiquette are past, adopts *this novel alternative* of presenting himself as a candidate for a share of public sanction. His hope for success, is grounded upon the following pretensions; namely, that his professional acquirements have been matured by twenty years' extensive practical experience; that he is privileged to refer to eminent barristers and solicitors, in confirmation of his abilities and integrity; and that clients who may honour him with their confidence, may fearlessly rely upon never having it abused.

As some persons may be desirous of having the *specific objects* of this office detailed, it has been deemed proper to state the following as the most prominent, namely:—

"Drawing and perusing abstracts of title; preparing and settling deeds and instruments of every denomination, (including copartnership deeds and all other commercial instruments,) from the most simple contract to the most complicated trust deed, settlement, and will; and completing the same for execution by the parties; promptly delivering opinions upon the validity of titles, as well as upon cases, whether submitted in person or stated in writing, arising upon the construction of either deeds or wills, or out of miscellaneous matters.

"P. S.—Letters and parcels directed to "The Conductor of the Conveyancing Office," must be postage and carriage free.

"Two hours of an evening, are devoted to reading with pupils, who from the comprehensive system of instruction, adopted by the conductor, derive incalculable advantages."

## AFFIRMATION.—CORROBORATIVE EVIDENCE.

SIR.—In answer to the enquiry of "A Country Attorney," p. 383, as to what corroborative

testimony is required in order to enable magistrates to make an order of affiliation, I will state two cases that were tried at the last Quarter Sessions here, and in both of which orders were made. They are as follow:—

*A. B.* swore that *C. D.* was the father of her illegitimate child, and called *E. F.*, her fellow-servant, as a witness to corroborate, who stated that on the night in question, *A. B.* and herself retired to rest about twelve o'clock, when *C. D.* intruded himself into their bed-room, and refused to leave it, although they both threatened to call for assistance. Finding that he would not go, she (*E. F.*) left *A. B.* and *C. D.* in the room, and went down to the kitchen, where she fell asleep, and continued there until she was awakened in about an hour afterwards by *C. D.* who told her she might then go up stairs, which she did, and found *A. B.* undressed and in bed. Upon this evidence an order was made upon *C. D.*

In the other case the party charged with being the father admitted an instance of intercourse, but not at the time the woman stated; and endeavoured to make out that the time that had elapsed would not allow of his being the father; but he failed in establishing his defence. An order was therefore made.

It appears to me that the mother's stating the fact to a female friend would not be sufficient, as it would still depend alone upon the truth of the statement made by the mother—to avoid which is the sole object of the clause relating to this question.

I also think that intimacy alone would not be sufficient, unless it could be proved by persons worthy of credit that the parties had been seen together about the time in suspicious places, at suspicious hours, or in a room alone, (and not in the habit of being there). In fact, unless admission be proved, it is a most difficult thing to obtain corroborative evidence.

A SUBSCRIBER.

## SUGGESTIONS FOR IMPROVING THE LAW.

### No. IV.

#### FOREIGN AFFIDAVITS.

SIR.—It is still a question with most of our law and equity judges, and the officers of their respective courts, whether the act of parliament 6 George 4, cap. 87, called the Consul's Act, (sec. 20) confers sufficient authority upon British consuls resident abroad, to take affidavits relating to other than mercantile transactions. This want of unanimity in legal opinions upon the point, and the great delay, expence, and loss incurred when affidavits are upon this ground rejected, shews the importance it is of to the profession generally and to British subjects travelling or sojourning in other countries particularly, that the question should be set at rest; and as the consul in all countries is generally the authority easiest of access to foreigners, and whose identity here is placed beyond

doubt, there seems to be no good reason why he should not be legally competent.

There cannot be a fitter time to accomplish the object through the legislature than the present, as in almost any one of the law acts now in contemplation or progress, an enactment to the express effect might be easily introduced; or the Lord Chancellor and the other judges might in the same manner be empowered to grant commissions to take affidavits in their respective courts to persons duly qualified and competent, residing in parts beyond the seas.

J. B.

## STEWARDS' FEES ON COPYHOLD ADMISSIONS.

The following case was recently submitted to an eminent conveyancing counsel, and we subjoin a copy of the opinion.

In 1796, *C. M.* was admitted to five copyhold houses held of the manor of *D.* to hold to her, her heirs and assigns, at the will of the lord, &c.

In 1820, *L. C. M.*, *E. A. S.*, and *H. F. M.*, were, on the death of the said *C. M.*, admitted to the copyhold houses as her co-heiresses, to hold the same as to one undivided third, to the said *L. C. M.*, her heirs and assigns; as to one other undivided third, to *E. A. S.*, her heirs and assigns; and as to the remaining undivided third, to the said *H. F. M.*, her heirs and assigns. In 1832, the five copyhold houses in question were put up for sale, and purchased by *A. B.* The steward of the manor in question always prepares the surrenders, and on this occasion, although the entirety of the houses had been purchased by the same person at one and the same sale, the steward thought it necessary to prepare three distinct surrenders from *L. C. M.*, *E. A. S.*, and *H. F. M.*, of their respective undivided thirds to the purchaser. At a court lately held, the purchaser has been admitted on these surrenders. The following is a copy of the admission fees claimed by the steward.

Mr. <i>A. B.</i> , on the surrender of <i>L. C. M.</i> :	
Search of Rolls	0 6 8
Proclamation at former court	0 6 8
Reciting the surrender	0 8 8
Admission of <i>A. B.</i>	5 15 0
Do. by attorney	0 6 8
Duty and parchment	1 4 0
Clerk and respiting fealty	0 14 6
Homage of 2 <i>l.</i> 2 <i>s.</i>	} 2 19 6
Bailiff, 12 <i>s.</i> 6 <i>d.</i>	
Cryer, 5 <i>s.</i>	
<i>A. B.</i> , on the surrender of <i>E. A. S.</i> ,	
the like fees	12 1 8
<i>A. B.</i> , on the surrender of <i>H. F. M.</i> ,	
the like fees	12 1 8
The purchaser having required some explanation of these fees, he is informed that in 1796 and 1820 the tenants were admitted by	

one copy, and that the then steward charged 5*l.* 15*s.* on each admission, being a fee of 1*l.* 3*s.* for each of the five houses, and that on the recent division of the estate into three undivided shares, the steward became legally entitled to a distinct and full set of fees on the purchaser's admission to each third.

The court rolls have been searched, and it appears for the last ninety or one hundred years the five houses have passed by one copy of admission, and it does not appear they were ever held by five distinct copies. Four of the houses adjoin each other; the fifth is situate some little distance from them; and this was, in all probability, until the last ninety or one hundred years, held by a distinct copy.

The ground on which the steward, in 1796 and 1820, claimed an admission fee of 1*l.* 3*s.* for each house, making together 5*l.* 15*s.*, seems to have been this: About a century ago the houses were, by the will of one F. C., devised to five of his relatives in undivided shares; and as five distinct estates in fee were thus created, the steward of 1796 and 1820 considered he was entitled to a distinct admission fee on each share, even though the entirety of the houses had become vested in one and the same person.

The length of the copies of the three late admissions cannot exceed fifteen or twenty folios each. The claim of 2*l.* 19*s.* 6*d.* on each admission, for the homage, bailiff, and crier, is also disputed.

The question submitted was, "Whether the steward, homage, bailiff, &c., were legally entitled to the fees in question; and if not, what proportion of those fees the purchaser ought to pay."

The following is the opinion:—

"I am of opinion that the steward cannot enforce the payment of the fees which he has demanded of the purchaser.

"From the above statement it is just possible that the estate can be shewn to consist of two distinct copyholds; but I see no reason for treating it otherwise than as one tenement, without further explanation as to the distinct character of the fifth house.

"Then as one copyhold, it is clear that the re-union of the undivided shares created by the will of F. C., destroyed the distinct tenancies, and rendered the property one tenement only again, in contemplation of law. *Garland v. Jekyll*, 2 Bing. 273. *Holloway v. Berkeley*, 6 Barn. and Cres. 2.

"It is also clear that co-parceners are but as one heir, and that they may claim to be admitted by one copy, and on payment of one set of fees. *Garland v. Jekyll*, *sup.* *Res v. Lord of the Manor of Bonsall*, 3 Barn. and Cres. 175.

"Assuming, therefore, that the purchaser was admitted under the three surrenders, without any express authority and agreement on his part, for having the admissions made out upon separate instruments, I am of opinion that he is only liable to one set of fees, and the estate to be treated as one copyhold only. But even if the purchaser has bound himself convention-

ally to take separate admissions, the case of *Everest v. Glyn*, 6 Taunt. 425, is an authority that without there is an immemorial custom for the charges made by the steward, he can only insist upon a full set of fees for the first admission, and that the charges for the two other admissions must be regulated by a *quantum meruit*. The evidence and the observations of the court in that case will materially assist in settling the proper bill of fees in the present one. Search of rolls, proclamation and clerk, and respiting fealty, homage, bailiff, and crier, certainly ought not to have been repeated. The admission fee, including parchment, I apprehend, should be only 1*l.* 5*s.* If the admission took place at a general court, I think the charge for homage could not be supported. And the charges for bailiff and crier are much too high."

## SUPERIOR COURTS.

### King's Bench Practice Court.

PLAINTIFF'S COSTS.—DISCHARGING JURY.—  
SECOND TRIAL.—JUDGE'S DISCRETION.

*A plaintiff obtained a verdict on a second trial, the jury on the first having been discharged by the Judge because they could not agree; and the Court was of opinion, that although the plaintiff succeeded on the second trial, he was not entitled to the costs of the first.*

In this case an action was brought by the plaintiff against the defendant; and after the case having been heard the jury retired to consider of their verdict. They continued out of court, discussing the case, during the remainder of the day on which the trial took place; throughout the night and the next morning they were still unable to agree. The Judge then, on coming into court, enquired of the foreman whether they were agreed. His answer was, that they could not agree. His lordship then enquired whether there was any probability of their agreeing if they took further time to consider. Their answer was, that no such probability existed. The learned Judge then, without applying to either party for their consent, of his own authority discharged the jury from finding a verdict. The cause was afterwards brought down again for trial, and a verdict found by the jury in favour of the plaintiff. When the costs in the cause came to be taxed before the master, the attorney for the plaintiff insisted that his client was entitled to the costs consequent to him on the first attempt at trial. The master, however, refused to allow such costs, and only gave him the costs of the second trial.

An application was afterwards made for a rule on the part of the defendant, requiring the master to review his taxation: a rule *nisi* having been obtained—

Cause was shewn against it. On the part of the defendant it was contended, that the costs

of the first ineffectual attempt at trial must be viewed in the same light as those in a case where a juror had been withdrawn by the consent of the parties. There was no reason for distinguishing this case, where the trial had been rendered ineffectual by the impossibility of the jurors agreeing, from one in which the consent of the parties had produced the same effect. The practice with respect to new trials, where nothing was said in the rule for the second trial about the costs of the first, was, that no costs of the first trial were allowed to the party successful on the second trial. In principle such a case was similar to the present. It was one in which the question between the parties had not been set at rest, and, therefore, there was no reason why either party should be entitled to the costs of an unsuccessful attempt to decide the matter in dispute between the parties. Costs could properly be only due to those parties who were successful in a cause. But here, on the first trial, no verdict had been pronounced, and therefore it was impossible to say who would be entitled to it; who was right or who was wrong. The plaintiff might be right, or the defendant might be right. Nothing final had been done in the case, and therefore the parties were left precisely *stata quo*, at the time the cause was originally called on for trial. There was no pretence, therefore, for saying that the plaintiff was entitled to the costs of the first trial, where no verdict was pronounced. The question, then, was, whether any difference existed on account of the jury having been discharged by the Judge himself, of his own authority, and not by consent of the parties. No difference could exist on that account, because it must be considered as the act of the Court, for which neither party was answerable.

In support of the rule, it was submitted, that the present case was like that of a remanet. Where a cause was placed in the paper at the assizes, and in consequence of the press of business it could not be tried, when it afterwards was tried and a verdict found, the party successful was, by the practice of the courts, entitled to all his costs at the first assize. The reason was, that the parties to the cause were not to blame, as they had done all that was in their power to try the cause, but the delay of the Court consequent on the press of business, produced the necessity of deferring the trial to another assize. As it was the delay of the Court, and not the delay of the party, he who was ultimately successful had a right to his costs incurred at the first assize. There an unsuccessful attempt was made to try, and the want of success in bringing the case to trial, was caused by the act of the Court. Here an unsuccessful attempt was made to try, and the want of success was caused by the act of the Court. There the party ultimately successful was held to be entitled to his costs; here, being similarly circumstanced, there could be no reason why he should not receive them. For these reasons, it was submitted, that the plaintiff was entitled to receive the costs of the first trial.

*Cur. adv. vult.*

*Patteson, J.* (after taking time to consider, and stating that he had had great difficulty in determining what decision he ought to pronounce) said, that after a review of all the cases, he thought the plaintiff was not entitled to the costs of the first trial. He could see no reason for distinguishing the case of a jury being discharged by the Judge because they were unable to agree, from that of a juror being withdrawn by consent of the parties. In the latter case it was conceded, and it was clear that no costs could be obtained by the party who ultimately succeeded, so far as the first trial was concerned. What reason, therefore, could there be for giving the plaintiff his costs in endeavouring to obtain the first trial? The present rule, therefore, for reviewing the master's taxation, must be discharged.

Rule discharged accordingly. *Sealey v. Pouls.* H. T. 1835. K. B. P. C.

### Common Pleas.

NEW RULES OF PLEADING.—BILL OF EXCHANGE.—REPLICATION.—DEMURRER.—CONSIDERATION.

*If a defendant pleads, that no consideration had been received by him for a bill of exchange, on which he is sued as acceptor, it will not be necessary for the plaintiff to state, in his replication, all the circumstances under which he received the bill, for the purpose of shewing that he gave consideration for the bill.*

This was a demurrer to a replication in an action on a bill of exchange, on the ground, that the plaintiff had not sufficiently alleged the giving of consideration by himself for the bill. As the case depends solely on the language and form of the pleadings, it will be necessary to give them somewhat at length. It was an action on a bill of exchange by the indorsee against the acceptor. The declaration stated, that "one William Clare, on the 22d day of October, in the year of our Lord 1833, made his bill of exchange in writing, and thereby required the defendants to pay to the order of him, the said W. Clare, 50*l.* three months after the date thereof, which period is now elapsed, and the defendants then accepted the said bill, and the said W. Clare then indorsed the same to the plaintiffs, of all which the defendants then had due notice, and then promised the plaintiffs to pay them the amount thereof, according to the tenor and effect thereof, and of their, the defendants, said acceptance thereof."

There were also counts for interest, &c. on an account stated. The defendants pleaded first, the general issue; secondly, "as to the breach of the said supposed promise in the said first count of the said declaration mentioned, say that there was not, at any time, any consideration or value for the defendants accepting the said bill of exchange in the said first count mentioned, or paying the amount thereof, or any part thereof, and that the said bill, indorsed by the said W. Clare, was after-

wards, to wit, on the 4th day of January, in the year of our Lord, 1834, delivered, on behalf of the defendants, to Thomas Hunt, for a special purpose only, to wit, that the said Thomas Hunt should keep and take care of the said bill of exchange, for and on behalf of the said defendants, and for their use and benefit, and not for the purpose of being negotiated or delivered over by him to any other person whatsoever, and the said Thomas Hunt then took and received, and from thence until the said plaintiffs became possessed of the same, as herein-after mentioned, held the said bill for the special purpose aforesaid, and that the said Thomas Hunt, in violation of good faith, and contrary to the said special purpose for which he so received and held the said bill as aforesaid heretofore, and whilst he held and had the same in his possession for the special purpose aforesaid, to wit, on the day and year last aforesaid, fraudulently and without the authority of the defendants, and with the intent to defraud the said defendants, in the introductory part of the first plea named, negotiated and parted with the said bill for his own use and benefit, and then delivered the said bill of exchange, so indorsed as aforesaid, to the said plaintiffs, and that the said bill of exchange was not at any time indorsed to the said plaintiffs otherwise than by the said Thomas Hunt's so delivering the same so indorsed by the said William Clare as aforesaid, to the said plaintiffs, and that the said plaintiffs, at the time when the said bill of exchange was so delivered to them as aforesaid by the said Thomas Hunt as aforesaid, had notice of the premises, and well knew that the said Thomas Hunt had no power or authority to negotiate or part with the same on his own account, and that there was not at any time any consideration or value given in good faith for the said indorsement of the said bill of exchange, to the said plaintiffs, as in the said declaration mentioned, and this the said defendants in the introductory part of this plea mentioned are ready to verify.

"Thirdly, as to the breach of the said supposed promise in the said first count mentioned, the said defendants, in the introductory part of the first plea named, say that the said bill of exchange, in the said first count mentioned, never was accepted by the said defendants except by the said Evan Meredith Roberts, for and on account of himself and all the said other defendants in this action mentioned, under and by virtue of an authority from the said last mentioned defendants, with the said E. Meredith Roberts, to accept bills of exchange on behalf of himself and the other defendants for particular purposes only, that is to say, for the purposes of discharging claims against certain persons composing a certain company called the South Metropolitan Gas Light and Coke Company, or upon the said E. Meredith Roberts and the other defendants as directors of the said company, but that the said E. Meredith Roberts, on the 22d day of October, in the year of our Lord 1833, in breach of good faith, fraudulently and wrongfully, and without the consent or authority of

the defendants in the introductory part of the said first plea named, and with intent to defraud them, accepted the said bill of exchange in the said first count mentioned, on behalf of himself and all the other defendants in this action, not on account of any of the purposes for which he was so authorised to accept bills on behalf of himself and the said other defendants as aforesaid, but for another and different purpose, to wit, for the private purposes of the said defendant, William Clare, who drew the same, and who then had no claim or demand whatever on the said other defendants, and of himself, the said E. Meredith Roberts, and the said defendant Lewis Roberts, and that the said defendants in the introductory part of the said first plea named, received no consideration or value for the said acceptance, and this the said defendants in the introductory part of the said first plea named, are ready to verify, &c."

The replication was:

"And as to the plea of the said last mentioned defendants, by them secondly above pleaded, as to the breach of the said promise in the said first count of the said declaration mentioned, the plaintiffs say, that after the making of the said bill of exchange in the said first count mentioned, and before the same had become due and payable, to wit, on the 4th day of January, in the year of our Lord 1834, the said bill of exchange was indorsed and delivered to the plaintiffs fairly and *bona fide*, and for a good and valuable consideration, that is to say, for monies advanced by and due and owing to them the plaintiffs: and the plaintiffs further say, that at the time when the said bill of exchange was so indorsed and delivered to them as aforesaid, they had not, nor had either of them notice of the premises in the said last mentioned plea mentioned, nor did they or either of them know that the said Thomas Hunt had no power or authority to negotiate or part with the said bill on his own account, and this they are ready to verify, &c. And as to the plea of the said last mentioned defendants by them thirdly above pleaded, as to the breach of the said promise in the said first count mentioned, the plaintiffs say, that the said Evan Meredith Roberts was duly authorised to accept the said bill of exchange in the said first count mentioned, on behalf of himself and all the other defendants in this action; and the plaintiffs further say, that after the making of the said bill of exchange, and before the same had become due and payable, to wit, on the said 4th day of January, in the year of our Lord, 1834, the said bill of exchange was indorsed and delivered to the plaintiffs fairly and *bona fide*, and for a good and valuable consideration, that is to say, for monies advanced by and due and owing to them the plaintiffs. And the plaintiffs further say, that at the time when the said bill of exchange was so indorsed and delivered to them as aforesaid, they had not, nor had either of them, notice of the premises in the said last mentioned plea mentioned, nor did they, or either of them, know for what purpose the said Evan Meredith Roberts was authorised to ac-



cept the said bill of exchange, nor for what purpose he accepted the same, and this they are ready to verify, &c."

To this replication the defendants demurred:

"And the said defendants, William Baker, James Foster, George Holgate Foster, William Lyall, and Frederick Blakely, as to the replication of the said plaintiffs, to the plea of them the last named defendants by them secondly above pleaded, say, that the said replication is not sufficient in law; and the said last named defendants state and shew to the Court here, the following causes of demurrer to the said replication to the said second plea, that is to say, that the said plaintiffs have not in their said last mentioned replication, stated or set forth with sufficient certainty what consideration or value was given by them the said plaintiffs for the said indorsement of the said bill of exchange to them the said plaintiffs, but have merely stated, that the consideration for the said indorsement to them, was monies advanced by, and due, and owing to them, the said plaintiffs, without stating with sufficient certainty when or to whom such monies were advanced, or by whom the same were due and owing, or whether they were advanced at the time when the said bill was indorsed to them, or whether they had been previously advanced and were due before the said bill was indorsed; and that although the replication is intended as an answer to the second plea, and to support the whole of the plaintiff's claim to the full amount of the bill mentioned in the declaration, yet it did not aver or state with sufficient certainty, that the monies so advanced by, and due, and owing to them the said plaintiffs, were equal to the amount of the said bill, or entitled them to recover to the full extent of the said bill, which according to the rules of pleading ought to have been shewn, stated, and set forth in the said replication to the said second plea, and for that the said plaintiffs, who were parties to the indorsement of the said bill, and knew what consideration they gave for the same, ought to have set forth in the said last mentioned replication with more certainty than they have done, the nature and extent of the consideration which they gave for the said indorsement, and when that consideration was given, to have enabled the defendants, who were no parties to the indorsement, or to the alleged consideration for the same, to ascertain what that consideration, if any, was."

In support of the demurrer it was contended, that the object of the new rules of pleading was to state particularly all the circumstances under which a bill of exchange had come to the hands of the party suing on it, in order to narrow the issue to be raised between the parties, and thereby to decrease the quantity of evidence which the parties would be required to produce on the trial. Merely stating, however, that the plaintiff had given consideration for the bill on which he sued, was quite inconsistent with the object of those rules, for it left the question just as much open as it would have been previous to the alterations in pleading.

On the other hand it was contended, that it was not necessary for the plaintiff to state more particularly what was the nature of the consideration which he had given for the bill. In many cases it would be quite impossible, and at any rate exceedingly inconvenient, for the plaintiff to be compelled to set forth all the circumstances under which he had received the bill. Were such a course to be pursued, the object of the rules would indeed be frustrated; for then the pleadings, instead of being shortened, as the Judges clearly intended when they framed the new pleading rules, they would be rendered longer than ever. Were all the complicated transactions out of which the consideration directly or indirectly arose, to be stated on the face of the pleadings, they might be elongated to an immeasurable extent. On the other hand, by the course which the plaintiff had here pursued in his replication, the parties were brought to issue on a particular fact, namely, whether consideration had or had not passed from the plaintiff to the indorser, from whom he had received the bill. This was clearly what the new rules intended should be done, and therefore the replication possessed all the requisites necessary under those rules.

*Per Curiam.*—We are of opinion, that the consideration in this case alleged by the plaintiff in his replication to have been given by him to his indorser, is sufficiently stated. Possibly it might not be sufficiently certain were the pleading a declaration, but in a replication we think it is certain enough. It even seems to us, that if the replication had been confined by the plaintiff to a mere denial of the allegation made by the defendant, that no consideration had passed from the plaintiff to his indorser, it would have been sufficient. That is however, not necessary for us here to determine. We are of opinion, that under the new rules of pleading, where a defendant denies consideration by the plaintiff to the indorser, it is not necessary for the plaintiff in his replication to set forth the particulars of the consideration, which he alleges himself to have given for the bill. The judgment of the Court will therefore be in favor of the plaintiffs.

Judgment for the plaintiffs.—*Bramah and others v. Baker and others*, H. T. 1835. C. P.

NEW RULES OF PLEADING.—BILL OF EXCHANGE.—REPLICATION.—DEMURRER.—CONSIDERATION.

*Under the new pleading rules, if want of consideration is pleaded, a simple denial of that want will be sufficient in the plaintiff's replication.*

In this case the defendant demurred to the plaintiff's replication, on the ground, that this being an action on a bill of exchange, with a plea denying consideration passing to the plaintiff, there was a mere denial in the replication of such defect of consideration.

Arguments having been heard in support of and against the demurrer—

The Court was of opinion that the replica-

tion was sufficient. The defendant having denied consideration to have passed from the plaintiff to the person who indorsed it to him, and the plaintiff having taken issue upon that allegation, the replication was sufficient. The judgment must therefore be for the plaintiff.

Judgment for the plaintiff.—*Prescott v. Levi*, 11. T. 1835. C. P.

## NOTES OF THE WEEK.

### HOUSE OF LORDS.

#### *Bills for second Reading.*

#### *Title of the Bill. Proposer.*

Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Ecclesiastical Jurisdic- tions.	Lord Brougham.

#### *Third Reading.*

Oaths Abolition.	Duke of Richmond. [30th Mar.
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#### *Passed.*

Infants' Property (Ire- land).	The Ld. Chancellor.
Contempts in Equity (Ireland).	The Ld. Chancellor.

### HOUSE OF COMMONS.

#### *Bills to be brought in.*

Law of Tenure.	Sir J. Campbell.
Law of Escheat.	Sir J. Campbell
Prisoners' Defence.	Mr. Ewart.
County Coroners.	Mr. Cripps.
Poor Law Amendment.	Mr. Trevor.
Registration of Births, &c.	Mr. Wilks.
Tithes Commutation.	Chanc. of Excheq.

#### *Second Reading.*

Law of Libel.	Mr. O'Connell.
Bankruptcy Funds.	Master of the Rolls
Ecclesiastical Courts.	Attorney General.
Clergy Discipline.	Attorney General.
Dissenters' Marriages.	Chancellor of Exch.

#### *In Committee.*

Abolishing Imprison- ment for Debt, &c.	Sir J. Campbell.
Copyholds Enfran- chisement.	Sir J. Campbell.
Highways.	Mr. Lefevre. 8th April.
Registration of Voters.	Lord J. Russell. 6th May.

### *Consideration of Reports.*

Execution of Wills.	Sir J. Campbell.
Law of Executors, &c.	Sir J. Campbell.

#### *Passed.*

Illegal Securities.	Mr. Rolfe.
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### PROGRESS OF THE LAW BILLS BEFORE PARLIAMENT.

It will be observed that but small progress has been made during the past week in the several Bills before the two Houses. In the course of little more than a month, twenty-five Bills affecting the law or the administration of justice, have been introduced. Six of these Bills relate to the Church and the Ecclesiastical Courts;—five to the law of Property and Conveyancing;—two to the Common Law;—two to Ireland;—one to the Criminal Law;—one to Bankruptcy;—and the others relate to the Poor; Coroners; Registration of Births; Dissenters' Marriages; Libel; Oaths; Highways; and Elections. This summary of the several classes of Bills will enable our readers to consider the extent of the alterations which are at present contemplated by the Legislature, and their probable effect on the Profession.

## ANSWERS TO QUERIES.

### *Common Law.*

#### *MINOR.—WIFE'S DEBT. P. 398.*

The case of *Paris v. Stroud*, Barnes, 95, is an answer to this query. There are several cases in which actions have been sustained against infants. If it be admitted that an infant is answerable for his wife's debt, there appears to be no distinction between his liability in this case, and his liability for necessities, or any other engagement which can be enforced against him. The reason the engagements of an infant are not binding upon him, viz. his incapacity to contract, arising from his presumed imbecility of understanding and want of free will, is not applicable here. *He* has not contracted, but *his wife*, who was not incapacitated. An infant is supposed to have sufficient judgment to choose a wife; and by the marriage, as he obtains all her means of discharging, so he is answerable for all her liabilities. W. Y. C.

**Law of Property and Contingencies.**

DEVISE—CONTINGENT OR EXECUTORY.  
PP. 80, 223, 239, 266, 335, 398.

I am still at issue with T. O. B. In my opinion the case of *Doe v. Newell* does not apply at all to the question. I do not dispute the propriety of the decision. It comes within the class of remainders particularized by Mr. Fearn, p. 240, where he says, "It sometimes happens that a remainder is limited in words which seem to import a contingency, though in fact they mean no more than would have been implied without them, or do not amount to a condition precedent, but only denote the time when the remainder is to vest in possession." But in the case in question, there was an evident contingency. The contingency was, not only that there should be a child born, but that such child should be living at the death of the tenant for life. That such a remainder is contingent, see Fearn, p. 9. It clearly comes within Mr. Fearn's definition of a contingent remainder, p. 2.—"An estate is contingent, when a right of enjoyment is to accrue on an event which is dubious and uncertain." SPAS.

the space of five years, in manner mentioned in the therein recited acts, shall actually be and continue as pupil to any practising barrister for any part or parts of the said term of five years not exceeding one year, it shall be lawful for the Judge, &c., upon affidavit, &c., to admit such person as attorney or solicitor, in like manner as is now done in cases where the clerk has served part of the term of his clerkship with the agent of the person to whom he has been bound. D. B. I.

[The year, we think, may be served with a practising barrister or certificated special pleader, at any time during the five years; but it is most beneficial to take the last year. We insert the letter, as the point, though of no difficulty, is a new one. Ed.]

**Law of Property and Contingencies.**

POWER OF APPOINTMENT.

An estate is settled on A. for life, and after his decease, to the use of such child or children of A. on the body of B. his wife, as A. should appoint; and in default of appointment, to such issue in tail. A. by his will appointed to C., his only child, for life; remainder to her issue as tenants in common. Is A.'s appointment to C.'s issue void for excess? and on C.'s death, will the estate go to her eldest son in tail, and not to her issue in common? A reference to cases is requested.

L. M.

**QUERIES.****Common Law.**

BILL.—GAMING.

A. drew a bill on B., and indorsed to C. B. accepted. C. indorsed to D. in discharge of a gaming debt, who indorsed it to E. for a valuable consideration, and without notice. Can E. maintain an action against B.?

W. Y. C.

CORPORATION.—BILL OF EXCHANGE.

Can any corporation (besides a trading one) indorse a bill of exchange?

W. Y. C.

LORD CHANCELLOR'S JURISDICTION.

If the Chancellor, sitting in bankruptcy, should assume a jurisdiction which does not belong to him, what is the remedy of an injured party?

W. Y. C.

**Law of Attorneys.**

CLERK'S SERVICE WITH COUNSEL.

A., being under articles, serves three years; then wishes to enter into the chambers of a conveyancer (a barrister) for one year; at the expiration of which, he is either to return to his original service, or be assigned over for the remaining year of his articles. Is there anything in this arrangement contrary to the acts of parliament, or the practice of the Courts, in relation to the admission of attorneys? The 1 & 2 G. 4, c. 48, s. 2, provides, that if any person bound in writing to serve as a clerk for

**THE EDITOR'S LETTER BOX.**

We are sorry to differ in opinion from our old correspondent "Aspiro," on the value of the extract he has taken the trouble to send us. We think it is any thing but a fair representation of our judicial system.

Reviews of several new Books have been unavoidably postponed. We hope to find room for them during the Easter recess.

The Defence of the Proposal for abolishing Arrest could not be conveniently inserted this week. It will appear in the next.

The Letters of G. G.; "A Subscriber;" and M. M. will receive early attention.

The Queries and Answers of S. C.; Y.; C. K. N.; "A Subscriber;" and from an Anonymous Correspondent, have been received.

The Suggestions on the Law of Inheritance and Wills are approved, and will be inserted early.

The Deputy Lieutenants of Counties can scarcely be considered as a Professional List. We must keep strictly within the legal pale, or double our space would be insufficient.

The Paper of "A Law Student," with his Suggestions, shall be attended to as early as practicable.

# The Legal Observer.

Vol. IX.

SATURDAY, APRIL 11, 1835.

No. CCLXIII.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## A FELONY WHICH CANNOT BE PUNISHED.

It is worthy of remark in these days of superfluous legislation, that a great crime, easy of perpetration, and not unlikely to be again committed, has twice escaped the merited punishment, and as yet remains unprovided for by the law. We shall shortly state the cases to which we allude.

The first of these is *Phipoe's case*,\* in which a person was induced to write a note of hand for 2000*l.*, under the threat of having his life taken away with a knife which was held to his throat. The person who committed the offence was indicted under the 2 G. 2, c. 25, for feloniously taking the note; but the question having been argued before the twelve Judges, it was contended on behalf of the prisoner that the note was of no value, and therefore not within the meaning of the stat. 2 G. 2, c. 25; and the Judges were of opinion that as the legislature, at the time of passing the statute 2 G. 2, c. 25, s. 3, whereby the stealing of a *chase in action* was made felony, could not possibly have had a case like the present in contemplation, it was not within that act of parliament; it is essential to larceny that the property charged to have been stolen should be of some value; that the note in the present case did not, on the face of it, import either a general or a special property in the prosecutor; and that it was so far from being of any, the least, value to him, that he had not even the property of the paper on which it was written, for it ap-

peared that both the paper and the ink were the property of the prisoner, and the delivery of it by her to him could not, under the circumstances of this case, be considered as vesting it in him; but if it had, as it was a property of which he was never, even for an instant, in the peaceable possession, it could not be considered as property taken from his person; and it is also settled that, to constitute the crime of robbery, the property must not only be valuable, but also be taken from the person and the peaceable possession of the owner. Judgment therefore was arrested, but the prisoner was detained in custody; and at the ensuing session for Middlesex, was prosecuted for the misdemeanor and convicted.

The statute of G. 2, was subsequently repealed by the 7 & 8 G. 4, c. 29; and it was enacted by that statute (s. 6) that if any person shall assault any other person, with intent to rob him, or shall with menaces or by force demand any such property [*i. e.* any chattel, money, or valuable security] of any other person with intent to steal the same, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be transported for seven years, &c.

This was the state of the law on the subject when a case occurred, the circumstances of which must be in the recollection of our readers. Mr. Gee, an attorney, was decoyed into a house, and under circumstances of great violence, was forced to sign an order for money and deeds claimed by the persons who committed the violence. They were afterwards indicted under the section of the statute we have stated above. The first count charged that the prisoners did on, &c., with menaces and by force, feloniously

\* 2 Leach's Cr. C. 774.  
NO. CCLXIII.

mand of William Gee his money, with intent to steal it. The second count charged that the prisoners did feloniously assault the said William Gee, with intent his monies from his person violently and feloniously to steal. Mr. Lee, the counsel for the prosecution, submitted,<sup>b</sup> that even if the prisoners were entitled to the money, it would still be an offence to obtain it in the mode employed; but that in fact they were not entitled to it; and with respect to the fact that Mr. Gee had not any part of the property about his person, that could make no difference.

*Patteson, J.*—Mr. Lee, have you any authority for your last proposition?

Mr. Lee.—No; but I would put this case; If a person's life were put in jeopardy by a robber presenting a pistol, and demanding his money, it would be no answer to the charge to show that the prosecutor had in fact no money in his possession. The demand by force and menaces constitutes the offence; and whether the party has or has not the money in his possession at the time is immaterial.

*Patteson, J.*—If a man, with menaces, demands a sum of money of another, and the person does not give it to him because he has it not with him, the offence is the same; but if it turns out, as in this case, that a sum of money known to be not then in his possession was demanded, the case is different. The prisoners do not take any thing from Mr. Gee; they got an order for the delivery of the deeds, and that was all they wanted. I am of opinion, that under this act of parliament the present indictment cannot be sustained.

Mr. Justice *Bosanquet* was of the same opinion.

The prisoners were also indicted under the same section of the act, and the first count charged that the prisoners, with menaces and force, did demand of Mr. Gee a certain valuable security for money, to wit, a deed (describing it) with intent the said security from the said W. G. feloniously to steal.

The second count was for feloniously demanding the same deed with menaces, &c. with the like intent. The third count charged that the prisoners did feloniously demand with menaces, a certain valuable security for money, as follows (stating the order) with intent to steal the same.

*Patteson, J.* (after the case was opened) said the same objection applies to this case as to the former. The indictment charges that they did demand with intent feloniously to

steal. *Adolphus*.—The case of *Rea v. Phipoe* is, I think, in point. *Bosanquet, J.*—In that case the Judges distinctly decided, that obtaining valuable securities from the maker by duress, was not stealing. In this case the documents were obtained by duress. The question is, whether the documents were ever in Mr. Gee's possession. *Bodkin*.—We can prove that. *Phillips*.—Not in his peaceable possession: he was in duress at the time. *Patteson, J.*—The documents are certainly such as the act contemplated: the question is as to the mode in which they were obtained. *F. V. Lee*.—The documents, when written by Mr. Gee, remained with him for half an hour or more, while he wrote some letters. They were therefore in his peaceable possession during that time. He only resigned them on account of the menaces and threats used towards him. There is a difference between this case and that of *Mrs. Phipoe*; for Mr. Courtois had never the peaceable possession of the note for 2000*l.*, which was extorted from him.

*Patteson, J.*—The learned Counsel has put his case with great ingenuity, but I am not able to see the slightest difference between the two cases. *Mrs. Phipoe* held a knife to Mr. Courtois's throat, and compelled him to give a promissory note for 2000*l.* He signed the note, and it was held that it was no robbery; for he never had peaceable possession of it, but had been forcibly and by violence compelled to sign the paper. Now, how does Mr. Gee's case stand? He was chained and padlocked, a rope was put round his neck, and his feet were tied to the ground: he could not move hand or foot, except just to write. They bring him pens ink, and paper, and he writes the orders. He had the papers, it was true, in his hands, but, chained as he was, is it possible to conceive that he had such a peaceable possession of them as to be at liberty to do what he pleased with them?—for that is the meaning of peaceable possession. I cannot perceive the difference between the case of Courtois and the present, except that the latter is the stronger case of the two. The ground of the decision in that case must govern the decision of the Court in this. A robbery cannot be committed, unless the person has the property in his peaceable possession, to do with it as he chooses. If Mr. Gee had brought the documents ready written, the case would have been different; but he does not write them until he is chained. Several nice and subtle distinctions have been taken, but I do not favor such distinctions; and therefore I hold with

<sup>b</sup> *Rea v. Edwards*, 6 Car. & Pay. 619.

the previous decision of the Judges, and am bound to be governed by it.

*Bosanquet, J.*—I entirely concur in this view of the question. The case is not to be distinguished in principle from *Mrs. Phipoe's* case. The decision of the judges in that case was, that it was not a robbery, because Mr. Courtois had never been in peaceable possession of the note; the circumstances are similar in this case, and therefore the jury must acquit the prisoner. Verdict—Not Guilty.

We would venture, therefore, to call the attention of the legislature to the present state of the law as to the feloniously obtaining an order for money, and suggest that a bill should be brought in to provide for its punishment.

### THE LAW RELATING TO GAME.

In England hunting has ever been esteemed a most princely diversion and exercise, and the property in such animals *feræ naturæ*, as are known by the denomination of game, was formerly vested in the King alone, and from him derived to such of his subjects as had received the grants of a chase, a park, a free warren, or free fishery. The truth of this position has been denied, and it is now of little practical importance; for the law on this subject has been very materially altered by various statutes; and lastly by 1 & 2 Wm. 4. c. 32. Franchise and liberty are used as synonymous terms; and their definition is a royal privilege, subsisting in the hands of a subject; of such nature is a forest, chase, warren, park, or fishery. Strictly speaking, forests are waste grounds belonging to the King, replenished with all manner of beasts of chase and venery, which are under the protection of the King and the forest laws. Chases and parks are indeed smaller forests in the hands of a subject, but not governed by the forest laws. Beasts of park or chase are properly buck, doe, fox, martin, and roe; and in common and legal sense extend likewise to all the beasts of the forest, which besides the other are reckoned to be hart, hind, hare, boar, and wolf—and in a word, all beasts of venery or hunting. (Co. Litt. 233.) Free warren is an exclusive privilege to preserve and kill certain beasts and fowls of warren. The beasts of warren are hares, conies, and roes; the fowls are either campestres, as partridges, rails, and quails; or sylvestres, as woodcocks and pheasants; or aquatiles, as mallards and herons. (Co. Litt. 233.)

A place for breeding warrenable or park beasts or birds, unless it be a lawful free warren, has no peculiar privileges. A person may legally keep as many hares and rabbits on his own land as he pleases: and his neighbour's only remedy for injuries done by them is, to kill the rabbits when they escape on his own land; but killing or taking a hare or coney is

punishable, excepting in the neighbourhood of sea banks or river banks, &c. Dogs, from their participation in the recreations of the chase, and their disposition to roam through forests and attack game, became the subject of legislation in an early period of our history. No person could keep a dog, by which is commonly meant a mastiff, without licence from the king; and such as were kept within any forest for the safety of house and lands, were required to be expeditated, that is, to have three claws on the fore foot cut off.

The animals *feræ naturæ*, of the order *pecora*, together with the lepus, or hare tribe, and the fox, of lupus, constitute the quadruped animals which now, in the legal sense of the word, are game. The wolf and wild boar are extinct in this country. The birds which, constituting game, are protected as such, are of the anas, or goose tribe, wild ducks, mallards, teal, widgeon, wild geese; of the ardea, or stork kind, the heron and bittern; of the scolopax, the woodcock and snipe; the genera charadrius, or plover; rallas, or rail; and tetras, containing grouse, quail, and partridges; the genus phasianus, or pheasant tribe.

Although the law recognizes no particular privilege in favor of a preserve for breeding game in any private ground, and the ordinary law of trespass is the only remedy, yet, in order to preserve the young brood, and prevent the species of game birds from becoming extinct, our legislature has provided that it shall be unlawful to destroy game during the time the old birds are hatching their eggs, and until the young ones are able to fly and take care of themselves. Thus it has been provided that pheasants shall only be shot or destroyed between the 1st of October and the first of February, leaving the rest of the year for the birds to make up for the havoc of the winter sporting. In like manner partridge shooting is lawful only from the 1st of September to the 1st of February, and grouse, heath, and moor game, black game and bustards, are in like manner protected, and also wild fowl, teal, widgeon, and other water fowl. Not only are the birds themselves protected, but their eggs. By 25 H. 8, wilfully destroying the eggs of the mallard, teal, or other wild fowl, was made punishable, in a penalty not exceeding 5s. per egg. By the same statute, destroying heron's eggs between the 31st March and the 30th June, or taking bittern or shoveler's eggs, subjected the offender to a penalty of 8d. per egg. This statute has been repealed, and a modification of it re-enacted by the new game act. (See § 24.)

Wild fowl come to this country periodically in such quantities that it has answered to invest considerable capital in decoys, where it is necessary the birds should be able to resort without the slightest disturbance, for they are very fearful and easily frightened away. They are called decoys, because the birds are decoyed into nets from following a trained animal, either duck or spaniel. Decoys are protected by law, and after twenty years uninterrupted use, they are so far privileged that a per-

son may be sued in an action on the case for knowingly firing a gun, or making a noise, even upon his own land, or in a public river, so near as to frighten away the fowl. Want of cleanliness about the persons employed in decoying is said to be as injurious as noise, for wild fowl have a very acute smell, and discover the slightest odour about the person.—*From the Elements of the Sciences, considered in their relation to the Practice of the Law.*

## REVIEW.

*A concise View of the Principles, Object and Utility of Pleadings; with an Appendix containing the new Rules and the Statute 3 & 4 W. 4, c. 42, s. 1, 23, 24, and some other Rules of Hilary Term, A.D. 1834; and the Practice as to the Amendments pending Trials at Nisi Prius and before Sheriffs.* By Joseph Chitty, Esq., of the Middle Temple, Barrister at Law. 2d. edition, London; S. Sweet.

WE consider it important to notice the preface of Mr. Chitty to his second edition of a concise view of the principles, object and utility of Pleadings, and the treatise which he has added to the first edition, on the Practice as to Amendments pending Trials. Mr. Chitty observes, that as regards *Declarations*, the practical operation of the new Rules has altered them only in three matters, namely :

"1st. In the *Commencements of Declarations* in most *personal actions* varied by the rule of Michaelmas term, 3 W. 4. A. D. 1832, in consequence of the Uniformity of Process Act, 2, W. 4. c. 39, having abolished the former *mesne process*, and enjoined five new forms of writs, and therefore rendered it necessary to alter the former description or mode by which the defendant had been sued or brought into Court; and as such rule prescribes the forms of such commencements, neither a Pleader, nor even the most inexperienced Practitioner, can have any difficulty in applying those forms; Secondly, the *Pleading Rules* remove the necessity for the statement of any *venue* or *place* in the *body* of a *declaration*, excepting when local description may be essential, and the venue in the margin suffices; Thirdly, and principally, the use of *second counts*, *varying* the statement of *one* and the *same* contract, as right, or injury, have been prohibited, and instances given in elucidation of the intended application of that rule. But still when there have been *really* and truly several *express* contracts, or promises, or *different rights*, the use, and indeed expediency of *several counts* continues; and if it were otherwise, the use

of the *Precedents of Declarations as previously published*<sup>b</sup> must equally continue in framing the *single count*, which will also ever vary in circumstances, and should be framed as nearly as possible according to the facts of each case; and, with the exceptions that declarations on bills of exchange and promissory notes, (the forms of which are prescribed by the rule of Trinity term, 1 W. 4. A. D. 1831,) and that by rule Hilary term, 4 W. 4, a declaration on a policy of insurance may aver the interest to have been in several persons, "*or some or one of them*;" there is scarcely any other necessary alteration, although a skilful pleader (in furtherance of the desire of the Legislature and of the Judges, that pleadings may *always* be as much as practicable shortened,) may, by *referring* in a second or subsequent count to the *first*, introduce in very concise forms numerous counts for different injuries; as in the instance of a declaration for *several illegal acts*, under colour of a *distress for rent*, the first count may state the plaintiff's tenancy under the defendant, and the injury by a distress for *too much rent*; and in the *second* and several other counts, by *referring* to the first, the repetition of the description of the tenancy may be avoided; and the second count may be for an *excessive distress by seizing too many goods*; and the third and other subsequent counts, in like manner referring to the first, may complain of all the numerous irregularities heretofore stated in distinct lengthy counts.<sup>c</sup>

"As regards *Pleas, Replications*, &c. it will be observed that the alterations introduced in the new rules are principally in the *more concise forms of commencements and conclusions* of each; and there has been but very small if any alteration introduced in the *body* of either plea or replication.

"In short, the *substance* or *body* of every part of pleading, whether declaration, plea, or replication, still continues the same as in the oldest entries, as well as in the best modern forms. Indeed it will be obvious, that with the exception of a few *technicalities* prescribed by the above-mentioned rules, in order to secure certainty and uniformity, and the risk of error if practitioners had been left to themselves in framing new forms, it will be found that whilst language and grammatical construction, and the principles of composition continue, as they ever will, the *same*, no material alteration in the *mode of describing a right* or an *injury*, or a *defence*, or answer, will be introduced."

In the introduction to the practice respecting Amendments of Variances, Mr. Chitty says :

"Having very recently been required professionally by a distinguished personage to

<sup>a</sup> *Frankum v. Falmouth*, 4 Nev. & Man. 330; 6 Car. & P. 529, as stated and observed upon in Bosanquet's Rules, 14, in note 8, id. 21, note 20; 9 Legal Observer.

<sup>b</sup> Chitty on Pleading, vol. ii. *per tot.* 5th edit.

<sup>c</sup> See 2 Chitty on Pleading, 5th edit. 715 to 727 c.

examine the extent of jurisdiction empowering a judge or sheriff to order amendments of variances pending a trial, or in cases of doubt to reserve the propriety of such amendment for the consideration of the Court in Banc, I have been so forcibly impressed with the discrepancy in the decisions, and the obvious misapprehension by some learned Judges of the true object of the Legislature in enacting the 3 & 4 W. 4, c. 42, ss. 23 and 24, that I have considered it my professional duty, in the following pages, to collect and observe upon, the several decisions, and suggest that in future a more liberal construction should be given to that statute than has on some recent occasions been evinced. That act was avowedly passed to rescue the administration of justice from the disgrace into which it had fallen in consequence of technical objections so frequently preventing a just investigation of the merits, and its expressions should therefore, according to the well-known rule regarding all remedial acts, be liberally, not technically, expounded according to the ordinary acceptance of the term "*merits*," by society in general, so as to attain the desirable object in view, which would occasion the amendment of every variance, except in a few rare instances, where it may be manifest that the opposite party has been actually misled in the trial of the right upon the merits; and the expression merits should be read as governing every part of the enactment, and as synonymous to the "*moral justice*" of each particular case. It will be found that after many of the cases to the contrary, the learned Judges who decided them expressed their regret; as in the instance of the late Lord Tenterden, who on two occasions expressed his regret that he had so decided, *Jelf v. Oriel*, 4 Car. & P. 22; and of Mr. Justice Taunton, who also regretted that he had misapprehended his powers when he refused an amendment in *Doe d. Poole and another v. Errington*, 3 Nev. & Man. 646."

From this part of the work we extract the following exposition of that which Mr. Chitty thinks, may be considered as a just and sound principle and rule in accordance with the intention of the legislature, and most salutary in the administration of justice.

"First, That in every case an amendment should be permitted when its allowance cannot be clearly shown to prejudice the opponent on the merits, although it might defeat his expectation of success upon some technical objection foreign to such merits; and that although he may have subpoenaed and incurred the expense of bringing to the assizes even forty witnesses to substantiate such technical objection, still it should not be allowed to prevail. And, secondly, another sound practical line of judicious conduct may be collected, as the best course to be observed in cases of doubt, whether an amendment should be allowed, from the instance before referred to, where a Judge, peculiar as well for his

literary attainments as for his great legal learning and sound judgment, although he inclined against permitting an amendment, yet refused to nonsuit the plaintiff, but suffered the cause to proceed to its natural conclusion, and directed the Jury to find the facts specially, and cause such finding to be endorsed on the postea, so as to take the opinion of the Court in banc under the 24th section, which enables the Court, upon the facts so found, to give judgment according to the very right and justice of the case, in cases where he should doubt whether the variance was immaterial to the merits of the case, and that the mistatement could not have prejudiced the opposite party in his conduct (i. e. on the merits) of the action or defence. And thirdly, that only in cases where it is quite clear to demonstration that the party has been misled in the conduct of his action or defence on the merits, should an amendment or such special finding be in any case whatever refused; such as the instance suggested by Mr. Baron Bayley, of a defendant having actually accepted two bills of exchange, and that declared on has been so misdescribed that the defendant has really supposed it to have been a bill in respect of which he has a perfect defence, and not that which he ought to pay without resistance. But as in general, either by the particulars of the plaintiff's demand, or other communications, long before a trial, most defendants well know the exact nature of the real demand intended to be prosecuted, and most plaintiffs know whether or not there be any custom, prescription, &c. which might in justice afford a defence on the merits; no presumption of ignorance of the real claim should ever be indulged, but actual and satisfactory grounds should be laid before the Judge, to satisfy him that the party has really been misled; and that, referring to a celebrated figure of Sir William Blackstone, without shutting his eyes against the light. Moreover, in all cases the Judge should evince an anxious desire that the trial should proceed, and never suffer the pressure of business to induce him hastily to decide against an amendment, in order to get rid of the trouble of deliberately and carefully trying the cause."

Mr. Chitty observes, that this should be the constant practice, and then will the administration of the law be rescued from those aspersions which have too frequently been circulated by disappointed suitors, in the results of legal proceedings; although justice may manifestly have been in their favor. We heartily concur in this, and think that the legislature have conferred sufficient powers on the Judges to effect by the rules and orders of the Courts, every useful alteration in the system of pleading.



## NEW ORDER OF COSTS IN THE HOUSE OF LORDS.

### TAXATION OF COSTS ON APPEALS AND WRITS OF ERROR.

ORDERED, by the Lords Spiritual and Temporal in Parliament assembled, That in all cases in which this House shall make any order for payment of costs by any party or parties in any appeal or writ of error, without specifying the amount, the clerk of the parliaments or clerk assistant shall, upon the application of either party, proceed for the taxation of such costs in such manner as is directed by an act passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, intituled, "An Act to establish a Taxation of Costs on Private Bills in the House of Lords," and shall give a certificate thereof expressing the amount of such costs: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for or in respect thereof, as are now or shall be fixed by any Resolution of this House concerning fees made or passed in pursuance of the said act and in relation thereto: And the said clerk of the parliaments or clerk assistant may, if he thinks fit, either add or deduct the whole or a part of such fees at the foot of his certificate; and the amount in money certified by him after such addition or deduction (if any) shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs:

ORDERED, That the said order be declared a Standing Order, and that it be entered on the roll of Standing Orders of this House, and be printed and published, to the end all persons concerned may the better take notice of the same.—*House of Lords, 3d April, 1835.*

### DEFENCE OF THE PROPOSAL FOR ABOLISHING ARREST.

*To the Editor of the Legal Observer.*

Sir,

As you have devoted a large space in many of your late numbers for articles on the Act for abolishing the Law of Arrests—all written by its opponents—perhaps you will be so good as to give the following article insertion in an early number of your valuable work, written by one who is a supporter of the principles contained in the Bill.

The people of England ever have thought, and I hope ever will think, that the individual freedom which every person, in every government,

ought to enjoy, is of more inestimable value than that of commercial prosperity—limited in its benefits, as it is, to a few members of the community. They are, I flatter myself, a very different people from the Romans, who were so willing to give up their individual liberty, if, by that act, their country might be aggrandized, and consequently their vanity, as Romans, flattered. It is a well-known axiom, that every man ought to enjoy, in as great a degree as possible, his liberty, *only giving up so much of it as is necessary to ensure stability to a well administered government.* Who is there that does not admit this? None. And if so, why do we find that when an act of parliament is about to be passed which enlarges the degree of liberty hitherto enjoyed by the subject, so many are ready to oppose it? Does this arise from interested motives or not? It will be my endeavour to shew that it does arise partly from interested motives, and partly from prejudice and dislike of change.

As to the question of interested motives in opposing this act. It is evident, that where a law, prescribing a certain mode of proceeding by a creditor to prevent his debtor from defrauding him, has been acted on for a considerable time, (as is the case with the law intended to be abolished,) it must preclude our thinking whether there might not be a better mode of attaining our object than the one in use. This is the case with our merchants, who, engaged in commercial pursuits, have neither leisure nor inclination to think of the matter—resting satisfied so that there be a mode of obtaining their demands, whether accompanied with cruelty towards their debtor or not. So that when the old method is about to be changed for a new one, the merchant fancies that the only security he had for his debt is taken away, and that the consequence will be a general panic in the system of credit.

But I would ask the commercial man, whether, if the same security could be given to his interests without taking his creditor's body, would it not be far more preferable to do so? As an Englishman, I am sure his answer would be in the affirmative. And now comes the question, whether the mode intended to be substituted in the place of the old one, is a sufficient protection to the creditor? It appears to me to be fully so; at least as far as respects those transactions which are fair and honorable on both sides—which is all, I think, that the legislature ought to look to; since, where transactions savour of fraud, there are other means which can be pursued to obtain full justice. Here I might enlarge on the many evils which arise from arresting and confining an honest, but poor debtor—but I shall forbear—though I cannot help expressing my astonishment, that a creditor should think his debtor will be better, or as well able to pay him his demand, when confined in a goal, as when at liberty and able to work for his livelihood. How many families have been ruined, and obliged to take refuge in that refuge of the desolate—a workhouse—through the hard-heartedness of their creditors! I think

that it is high time the legislature made the spleen of these creditors to run in another direction.

There are other classes of interested persons, the principal among whom are those the execution of this old law has raised up, and who depend on its continuance, either in part or wholly, for their living, and who therefore are bound by the strongest of all arguments—interest—to oppose the introduction of a different law. I here allude to lawyers, clerks in public law offices, and sheriffs, with their officers.

We have thus seen that the commercial, the legal, and (if I may be allowed the expression) the sherifical part of our country, are opposed to the introduction of the new law—the first from the fear of its affecting their commercial prosperity, by arresting the course of public credit; and the others from the fear of being deprived of their means of existence.

With respect to those persons who are opposed to the new law by their prejudices against and dislike of changes, I have only to say, that it is a most unnatural prejudice, since, let them recollect, had there been no changes in our laws, customs, and even in our noble constitution, since the time of William the Conqueror, we still had been serfs and bondsmen—we still had had the curfew, the forest laws, and the feudal system in all its glory.

M. J. N.

## ON THE DIFFERENT DEGREES OF CRIMINALITY IN INSOLVENT DEBTORS.

ONE of the principal arguments in favor of abolishing Arrest is, that it is oppressive to the debtor, who is presumed to be generally, if not universally, unfortunate, and not culpable. We incline, however, to think that the cases of culpability are far more numerous than those of misfortune; and to illustrate this, we take from the Appendix to the Fourth Common Law Report the following extract from "Essays on Principles of Morality, and on the Private and Political Rights and Obligations of Mankind," by Jonathan Dymond. Vol. 2, 2d edit., page 201—208.

"Insolvency is occasioned by guilt in endless gradations, and sometimes by great crime. The number of insolvents who are entirely innocent is comparatively small, and of those who are not innocent the gradations of criminality are without end. Some are incautious or imprudent: some are heedlessly and some shamefully negligent; and some again are atrociously profligate. The whole amount of injury which is inflicted upon the people of this country by criminal insolvency, is much

greater than that which is inflicted by any one other crime which is ordinarily punished by the law. Neither swindling, nor forgery, nor robbery, in their varieties, produces an equal amount of mischief. To every single individual who loses his property by theft or fraud, there are probably twenty who lose it by criminal debtors. Such facts evidently furnish weighty considerations for the legislator, as the guardian of the public welfare; and that system of jurisprudence is surely defective which allows so much public mischief, almost without restraint. Justice and policy alike indicate the necessity of more efficient security against the want of probity in debtors, than has hitherto been furnished by the law.

"A man who begins business with a thousand pounds of his own, and who keeps a stock of goods to the value of fifteen hundred, is obliged in honesty to insure. If he does not insure, and a fire destroys his goods, so that his creditors lose five hundred pounds, he surely is chargeable with a moral offence. It cannot be just knowingly to endanger the loss of other men's property, which has been intrusted in the confidence of its repayment. But if such a man commits injustice towards others, upon what grounds is he to be exempted from the rightful consequences of injustice? We would not speak of such a man as a criminal, nor affirm that he deserves severity of punishment; but we say, that since he has needlessly and negligently sacrificed the property of other men, it is fit that the penal legislator should notice and discountenance his offence.

"Another trader, without any vicious intention, 'neglects his business.' His customers by degrees leave him. Year passes after year with an income continually diminishing, until at length he finds that his property is less than his debts. This man is more vicious than the former, and should be visited by a greater amount of punishment. Another, with a prosperous business and no great vices, allows a more expensive domestic establishment than his income warrants. His property gradually lapses away, and at last he cannot pay twenty shillings in the pound to his creditors. Can it be disputed that a man who knows that he is in a course of life which will probably end in depriving others of their property, should be regarded in any other light than as an offender against justice? And can it be unreasonable for the jurisprudence of a community to act towards such an offender as if he were a dishonest man?

"We are persuaded that if the penal law took cognizance of all insolvents, and regarded all who could not satisfactorily account for their insolvency as public delinquents; if these were prosecuted as systematically as thieves are now; and if by these means the idea of 'crime' was associated with their conduct in the public mind, the deplorable mischiefs of bankruptcy would be speedily and greatly diminished. In the restraint of all crimes, the power of public opinion is great. At present, unhappily, the man whose offence is justly worthy of impri-

sonment or transportation, obtains his certificate, and then becomes the accepted associate of virtuous men. But teach the public to connect with him the idea, not of a bankrupt, but of a prisoner; not of a man who has acted dishonorably towards his creditors, but of a convicted criminal; and this association would cease. Who would admit a footpad to his table? And who would admit to his table a man who was just like a footpad? It requires little knowledge of the constitution of society to know, that when the offences of fraudulent and negligent insolvency are ranked in the public estimation with those of ordinary criminals, men will be influenced by a new, and a powerful, and an efficient motive to avoid them."

## NEW BILLS IN PARLIAMENT.

### DISSENTERS' MARRIAGES.

This is intituled "A Bill concerning the Marriages of Persons not being Members of the United Church of England and Ireland, and objecting to be married according to the Rite thereof."

It recites that it is expedient to relieve those who are not members of the united church of England and Ireland, and who object to be married according to the rite of the said church, from the obligation of being so married: and that on account of the difficulty of requiring by law, as essential to the validity of marriage, any other religious rite or ceremony to which all persons, not being members of the said church, would be willing to conform, it is expedient to provide another mode of contracting valid marriage between such persons, leaving it to the free discretion of such persons to observe, in addition thereto, such religious rites and ceremonies as they may deem fit: and that it is necessary that proof of the marriages of such persons should be preserved and made certain and easy: It is therefore proposed to be enacted as follows:

#### *Mode of Marrying.*

1. That from and after the next, when any two persons, not being members of the united church of England and Ireland, shall be willing to be united together in matrimony, and unwilling that the same should be solemnized in the face of the church, according to the rite of the said church, notice in writing, according to the form marked (A.) in the schedule hereunto annexed, shall be given by one of them in person to any justice of the peace, acting in and for the hundred wherein such person giving such notice shall have dwelt for seven clear days next before the

giving such notice, of their intention to acknowledge their marriage before such justice on a certain day and hour therein named, such day not being a Sunday, and not less than *fourteen* clear days nor more than *three* calendar months from the giving of such notice, and such hour being between the hour of *eight* and *twelve* in the forenoon: provided that if there be no justice of the peace acting in such hundred, such notice may be given to a justice acting in and for an adjoining hundred of the same county, riding, or parts; and that where such dwelling as aforesaid shall have been in any city, borough, or franchise, having justices of the peace acting in and for the same, such notice shall be so given to some one of such last-mentioned justices.

2. That in case any such justice as aforesaid shall be prevented by illness, absence, or other cause, from acting as hereinafter mentioned at the time named in the said notice, or in case the parties shall propose any other time, the time named in the said notice shall not be adhered to, but it shall be lawful for such justice, with the consent of the parties, to name any other time within the said *three* months for his so acting, or by the like consent to send such notice, with an indorsement signed by him thereon of the day on which he received it, to any other justice of the peace acting for the same hundred, or in and for the same city, borough, or franchise, as the case may be; and thereupon such other justice, having received such notice, shall within the said *three* months act as hereinafter is mentioned.

3. That on the day named as before-mentioned for the making of such acknowledgment of marriage, and before the same is made and taken, the parties to the intended marriage shall make and sign before such justice a joint declaration according to the form in the schedule hereunto annexed, declaring that they are not members of the united church of England and Ireland, and that they object to be married according to the rite thereof; and after such declaration shall have been so made and signed, each of the said parties shall then and there make oath before such justice that he or she respectively believes that there is no impediment of kindred or alliance, or any other lawful cause to bar or hinder the marriage then about to be acknowledged, and that he or she is of the full age of *twenty-one* years, or a widower or widow, as the case may be; and if both or either of the said parties be under that age, and not a widower or widow, then the party being under that age, and not a widower or widow, shall make oath before such justice that the consent of his or her parents or guardians to the marriage then about to be acknowledged has been obtained; or if there shall be no person duly authorized to give such consent, such party shall make oath to that effect; and the party who shall have given such notice as aforesaid, shall make oath that he or she has dwelt for *seven* clear days as herein-before mentioned; and the forms of such oaths respectively shall be according to the forms in the schedule hereunto annexed;

and after the oath so required shall have been taken, such parties shall, in the presence of such justice, and of *two* witnesses besides such justice, make a declaration to each other in the following words :

"I, { A. B. } hereby acknow- { C. D. } to be  
{ C. D. } ledge you { A. B. } my  
wedded { wife.  
husband."

And shall give to such justice an acknowledgment in writing of such marriage, to be signed by them, and attested by the said *two* witnesses according to the form marked (B.) in the schedule hereunto annexed; and such justice shall then and there take such acknowledgment, and sign the same with his name.

4. That no marriage of any persons, not being members of the united church of England and Ireland, which shall not be solemnized in the face of the church, and according to the rite of the said church, shall be good to any intent before and until it shall have been so acknowledged as aforesaid; and that every marriage so acknowledged shall be as good, valid and effectual as if the same had been solemnized in England after publication of banns in the face of the church, and according to the rite of the said church: provided that such acknowledgment shall not be valid to any intent, unless *fourteen* clear days shall have passed between the day of the original receiving of notice thereof and the giving of such acknowledgment, and unless such acknowledgment be given within the said *three* months; and that nothing in this act contained shall affect in any way any marriage solemnized in England in the face of the church and according to the rite of the united church of England and Ireland, or make good to any intent any marriage which, had the same been solemnized in England after publication of banns in the face of the church, and according to the rite of the said church, would by law have been void or voidable; and that nothing herein contained shall in any way affect the jurisdiction of any court in matters relating to matrimony.

#### *Mode of Registry.*

5. That the justice of the peace who shall have taken such acknowledgment as aforesaid shall, as soon afterwards as conveniently may be, send the said acknowledgment to the minister of the parish or chapelry having its own registers of marriages, wherein the party giving such notice shall have dwelt as aforesaid, or in case such party shall have so dwelt in any extra-parochial place, then to the minister of a parish next adjoining thereto and within the same hundred; and that such justice may, if the parties to the marriage shall request the same, and he shall so think fit, deliver the said acknowledgment to the said parties, to be by them conveyed and delivered to such minister as aforesaid; and that the minister of the parish or chapelry shall, on receiving every acknowledgment of marriage, number it in the order in which he shall have received the same, and shall enter and accurately copy the acknowledgment in a fit book, to be provided and paid for in the like manner as the regis-

ter book of marriages in the parish or chapelry is now provided and paid for, and shall number the entry and copy with a number corresponding to that on the original acknowledgment; and shall file such acknowledgment as soon as he shall have so entered and copied the same, and shall keep the file thereof, and the said book, with the other registers of the parish or chapelry; and shall permit every person applying to inspect such original acknowledgment, and such book, and to have copies of any such acknowledgment, or of any entry in such book, on the like terms and conditions to which any person inspecting or obtaining copies of entries in any register of marriages is now subject; and that every such acknowledgment, and every such entry, or an examined copy of either of them, shall be as valid to all intents as any entry or examined copy of any entry of a marriage entered in such register as is now by law required.

6. That if any person, with intent to elude the provisions of this act, shall knowingly and wilfully insert, or cause or permit to be inserted, in any such acknowledgment or book of acknowledgments of marriages, any false entry of any matter relating to any marriage, or shall forge or alter in any such acknowledgment or book any entry of any matter relating to any marriage, or shall utter any writing as and for a copy of any such acknowledgment or of any entry in any such book of any matter relating to any marriage, knowing such writing to be false, forged or altered, or if any person shall utter any such acknowledgment or any entry in any such book of any matter relating to any marriage, knowing such acknowledgment or entry to be false, forged or altered, or shall utter any copy of such acknowledgment or entry, knowing such acknowledgment or entry to be false, forged or altered, or shall wilfully destroy, deface or injure, or cause or permit to be destroyed, defaced or injured, any such acknowledgment or book, or any part thereof, every such offender shall be guilty of *felony*, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than *seven* years, or to be imprisoned for any term not exceeding *four* years, nor less than *two* years.

#### *Consent of Parents, &c.*

7. That where parents or guardians have authority by law to give consent to marriages solemnized in England, in the face of the church, and according to the rite of the united church of England and Ireland, parents and guardians shall have authority to give the like consent to marriages, to be acknowledged under the provisions of this act; and such consent shall be as much and equally required to such acknowledgment as to any marriage solemnized in England in the face of the church, and according to the rite of the said church, unless there shall be no person duly authorized to give such consent.

8. That where, from unsoundness of mind, or the being in parts beyond the seas, or the unreasonable or undue refusal of such parents

or guardians, such consent cannot be had, there the judicial declaration of the Lord Chancellor or Lords Commissioners of the great seal for the time being, the Master of the Rolls or the Vice-Chancellor, shall be as necessary, and in like manner obtained and made in all cases of marriages to be acknowledged under the provisions of this act, as in cases of marriages solemnized in England in the face of the church, and according to the rite of the united church of England and Ireland.

[To be continued.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### COSTS.—ABANDONED MOTION.

*Held, that a short hand writer's affidavit verifying his notes of what passed in Court in a case, is not such an affidavit as would entitle a party arraigned with notice of an abandoned motion, to more than 40s. costs, as limited by the general order of 5th of August, 1818.*

Mr. Rolfe moved, that the costs of an abandoned motion in this case be limited to 40s., according to the terms of the general order of the Court, of the 5th of August, 1818, by which it was ordered, "that thenceforward, if a party gives notice of motion and does not move accordingly, he shall, when no affidavit is filed, pay to the other side 40s. costs, upon production of the notice of motion. But when an affidavit is filed by either party, the party giving such notice of motion, and not moving, shall pay to the other side costs to be taxed by the Master, unless the Court itself shall direct upon production of the notice of motion, what sum shall be paid for costs." No affidavit relating to the motion was filed.

Mr. Wakefield opposed the motion, and produced an affidavit of one of the short-hand writers of the Court, verifying his report of what passed before the Vice Chancellor. As his clients intended to use this affidavit on the appeal motion before the Chancellor, the filing of it entitled them to the full costs on the motion which was abandoned.

The Lord Chancellor said, there could be no doubt of the great utility of a short-hand writer's note of the proceedings and judgment of the Court in all cases; but it could not be received as evidence, nor indeed, received at all, unless both parties agreed that it should be so received. In the present case it was contended, that such a note came within the construction of the order of the Court; but his Lordship could not assent to that doctrine. There was no pretence for saying, that the short-hand writer's note was evidence in the case, and therefore, although the parties evidently intended to use it *bond fide*, yet its existence could not affect the question of costs on the abandoned motion.

*Manners v. Charlesworth*, at Westminster, January 31, 1835.

### Rolls Court.

#### PRACTICE.—EXCEPTIONS.

*A creditor brings in a state of facts before the Master to whom the cause stood referred, and attends the subsequent proceedings before the Master up to the making the report without making objections. He then obtains the conduct of the cause. Held, that he cannot take exceptions to the report then, not having made objections before the Master.*

Mr. Pemberton opened this petition, the prayer of which was to confirm the Master's report, and direct a distribution of the funds in the suit. In 1809, Captain Cameron and a Mr. Theobald went on a voyage to the East Indies, and were lost on the passage. Messrs. Cockerell and Paxton were creditors to a large amount of these gentlemen, and their debts were secured by bonds. The bill was filed on behalf of the creditors, against the executors of the deceased, and on the 17th of November, 1829, a decree was made for an account. In 1831, Mr. Nathaniel Cameron brought in a state of facts before the Master to whom the cause stood referred, claiming to be a specialty creditor of his deceased brother, which claim the Master allowed. On the 22d of January in the present year, this same gentleman applied to the Vice-Chancellor to be allowed to have the conduct of the suit, which application was granted him. The master had, about the same time, made his report, which he submitted ought to be now confirmed. As Mr. N. Cameron had, when before the master, full opportunity to apply for the order which he subsequently obtained, his objection to the confirmation of the report was too late.

Mr. Tinney, on behalf of Mr. N. Cameron, contended that his client ought to have an opportunity to except, if he thought proper, to the master's report, which he could not do during the pending of the application before the Vice-Chancellor. The order of his Honor, granting that application, had not been drawn up, and Mr. Cameron had not an opportunity of examining the report. Under these circumstances he prayed that the petition might be ordered to stand over.

His Honor the Master of the Rolls said, he was ever unwilling to shut out a party from the opportunity of disputing a master's report, when he advanced grounds such as to lead to the supposition that he could make out a case sufficient to entitle him to the indulgence which he sought. He therefore had watched the dates of the proceedings, and he could not but think that the Vice-Chancellor's order had not the least reference to the present application. Mr. Cameron, independently of this order, was a specialty creditor, and according to the state of facts allowed by the master, was much interested in the account. On the 12th of November, he was served with a warrant, and appeared to have attended the proceedings under the report. He then made no complaint, and if he did, he took no means to bring the matter before the Court. In ordinary cases

the Court would not hear a party who had not taken the usual steps to obtain relief until the petition for confirming the report was before the Court. All this time he must have known that the master was going on to settle his report, and when the order of the 22d of January was ultimately made, it was clear that that order did not affect any anterior proceedings. At that time the report existed, and how could the party possibly conceive that an order made on the 22d of January, giving the conduct of the cause to Mr. Cameron for the future, was to have any power over a report made before that order was obtained. No party was before the Court challenging the accounts as stated in the master's report. Not one single word had been said on the subject, and therefore he saw no reason to stay the proceedings or to give the party an opportunity of excepting to the report. The petition only sought to have distributed a fund, the matter in dispute, to the creditors, without waiting for a further account, which would take a considerable time. His Honor, for these reasons, granted the prayer of the petition.

*Larkins v. Paaton*, at Westminster, Hilary Term, 1835.

#### King's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.—

LACHES.—ENLARGING RULE.

*A rule for judgment as in case of a nonsuit must be enlarged until the following term, where it has been served too late to shew cause in that in which it was drawn up to shew cause, as cause cannot be shewn at chambers during the vacation.*

In this case a rule nisi was obtained for judgment as in case of a nonsuit, but was not served until the 28th of January. The attorney in the cause was resident in the country, and therefore, instructions could not be obtained to oppose the rule during Hilary term.

These facts were stated in the affidavit of the agent in opposition to the rule. It was contended, that under these circumstances the defendant had not placed himself in a position to entitle him to require the plaintiff to shew cause against the rule.

In support of the rule, it was contended, that although the rule had been served too late on the plaintiff's attorney, to require him to shew cause in the present term, yet the rule might be enlarged to shew cause at chambers during the Hilary vacation.

*Palteua, J.*, was of opinion, that according to the practice of the Court, under such circumstances the rule must be enlarged until the next term; and cause could not be shewn at chambers.

Rule enlarged accordingly.—*George v. Chapman*, H. T. 1835. K. B. P. C.

#### Common Pleas.

WRIT OF RIGHT.—ENTITLING PLEA.—REAL ACTION.—NEW RULES OF PLEADING.

*Proceedings in real actions are not within the new rules of pleading, promulgated by all the Courts.*

This was a writ of right. The defendant

pleaded to the count, and entitled his plea generally of Hilary term, in the 5th year of W. 4.

An application was afterwards made to set aside the plea, on the ground of it being thus generally entitled, instead of the day of the month and year when it was delivered being introduced, in pursuance of the first of the new pleading rules of Hilary term of the 4th W. 4. The words of the Law Amendment Act, the 3 & 4 W. 4, c. 42, were perfectly general, and applied to all actions at law. The writ of right was an action at law, and therefore came within the scope of the act of parliament, under the authority of which the Judges had made and promulgated the rules of pleading.

The Court was, however, of opinion, that the act in question only applied to those cases over which the Courts had a common jurisdiction. The writ of right was a real action, and exclusively within the jurisdiction of the Court of Common Pleas. The Courts, therefore, had no common jurisdiction over such a proceeding, any more than they had over criminal proceedings carried on in the Court of King's Bench; to those latter it was quite clear the new rules of pleading did not apply. In the same manner the rules did not extend to proceedings in real actions. The plea, therefore, was correctly entitled, and the present application, therefore, could not be granted.

Application refused.—*Miller v. Miller*, H. T. 1835. C. P.

SETTING ASIDE PROCEEDINGS ON BAIL-BOND.

—PUTTING IN SPECIAL BAIL.—UNIFORMITY OF PROCESS ACT.

*Notwithstanding any rule of Court previous to the Uniformity of Process Act, no matter where the defendant may reside, he must put in special bail within eight days after the arrest.*

*He must not only put it in, but give notice of it also.*

In this case the defendant had been arrested in three several actions. Bail-bonds were taken by the sheriff in all three of them. More than eight days were allowed to elapse before notice of special bail being put in was given to the plaintiff. Special bail, however, was put in before eight days after the arrest had expired. The plaintiff accordingly took an assignment of the bail-bonds from the sheriff pursuant to the statute.

A rule nisi was afterwards obtained, on the ground that the defendant had obtained fifteen days to put in special bail in such a case as the present, the defendant residing more than forty miles from London, and it being a country cause. Such a privilege, it was contended, was given by the rule of H. T. 2 W. 4.

On shewing cause against this rule, it was contended, that the Uniformity of Process Act had repealed or abrogated the rule of Hilary term, with respect to the time at which special bail ought to be put in. The period allowed to the defendant for putting in special bail, was regulated by the warning placed at the foot of the writ of *cupias*, and the proceedings

mentioned in which were authorized to be taken by one of the sections of the act of parliament itself. That warning authorized the bail-bond to be taken by assignment from the sheriff to the plaintiff, unless special bail was put in before or at the expiration of eight days from the execution of the process. Here the requisition of that warning had not been complied with. It was true special bail had been put in, but no notice of such putting in had been given previous to the expiration of that period; merely putting in was not sufficient, without notice. It was the practice of the Court, not to consider special bail as put in until notice of it had been given to the plaintiff. Here no notice having been given, it could not be considered as having been put in previous to the expiration of the eight days.

In support of the rule, it was submitted, that the provisions of the Uniformity of Process Act were not intended to supersede or abrogate the rule of H. T. 1 W. 4; that rule was a modification of the time within which it should be necessary under certain circumstances, as those wherein the defendant in this case was situated, special bail should be put in. As there was no express provision of the statute abolishing that rule, no reason existed for contending that the defendant was to have the period shortened within which he ought to put in special bail.

The Court was however of opinion, that the Uniformity of Process Act must be considered as now furnishing the rule with respect to the time to which a defendant was entitled, for the purpose of putting in and perfecting special bail. The rule in question, to which reference had been made, applied to the old process in existence previous to the passing of the Uniformity of Process Act. The rules which applied to the old process, and the time within which bail ought to be put in, could not apply to proceedings on the new process. In accordance with this principle had been the decisions of the Courts on this subject. The plaintiff, therefore, was right in contending that he was entitled to take an assignment of the bail-bond, if special bail was not put in within eight days after the expiration of the process.

The next consideration was, whether, assuming this to be the construction of the act, the defendant had sufficiently complied with the practice, by merely putting in the bail without giving notice to the plaintiff within the eight days of its having been put in. The practice of the Court had always been, not to consider special bail as put in until notice had been given. No notice having here been given, bail could not be said to have been put in.

The proceedings, however, may be set aside on the payment of costs.

Rule absolute on the payment of costs.—*Grant v. Gibbs*, H. T. 1835. C. P.

JUDGMENT AS IN CASE OF A NONSUIT.—MALICIOUS ARREST.—UNFOUNDED CHARGE.

*Where the proceedings of a defendant are such as to render it prudent for the plaintiff not to proceed in his action, the defend-*

*ant will not be entitled to judgment as in case of a nonsuit.*

This was an action for maliciously charging the plaintiff with an offence before a magistrate. When the charge came to be enquired into, the magistrate dismissed it. Some time afterwards, the plaintiff brought his action against the defendant for the malicious arrest. The defendant then preferred an indictment against the plaintiff for the same offence at the quarter sessions. He afterwards removed the indictment by a *certiorari* into the King's Bench. After the indictment had been preferred and the bill found, the plaintiff suspended his proceedings in the action against the defendant.

A rule *nisi* for judgment as in case of a nonsuit was then obtained.

Cause being shewn against this rule, it was contended, that the defendant was not entitled to have his rule made absolute, as a perfect excuse was furnished to the plaintiff for not proceeding to trial, by the conduct of the defendant himself. It would not have been prudent for him to proceed to trial, while the question as to the criminal charge which formed the subject of the action was still pending. How could the plaintiff hope to obtain full compensation in damages, while from the proceedings of the defendant it was not ascertained whether the charge was well or ill founded.

In support of the rule it was submitted, that the defendant was entitled to judgment as in case of a nonsuit, according to the course and practice of the Court, and that the fact of criminal proceedings against the defendant being in a state of pendency, could be no answer to the present application.

The Court was of opinion, that the plaintiff could not prudently proceed with his action under the circumstances, and therefore directed the rule to be discharged, with costs.

Rule discharged, with costs.—*Grey v. Hutchins*, H. T. 1835. C. P.

NEW RULES OF PLEADING.—TROVER.—DIFFERENT PLEAS.—LIEN.—CUSTOM.—DELIVERY.

*A defendant may plead several pleas in an action of trover, unless it is clear that they do not substantially allege different grounds of defence.*

This was an application to plead several pleas in an action of trover against a bailee. The first plea alleged a right of lien by agreement, and the second a lien by custom. The third and fourth contained similar defences, but were in respect of different parties.

A rule *nisi* having been obtained to plead such pleas—

Cause was shewn against it, when it was contended, that such pleas were contrary to the provisions of the new rules, as they must all be considered as substantially alleging the same ground of defence.

In support of the rule it was submitted, that

the defendant had in fact alleged separate grounds of defence in each plea, and therefore they were not within the prohibition contained in the new rules of pleading.

The Court was of opinion, that as it could not be said the defendant had not alleged separate grounds of defence in his pleas, there was no ground for refusing the defendant leave to put these pleas upon the record. The present rule must therefore be absolute.

Rule absolute accordingly.—*Leuckhart v. Cooper and another*, II. T. 1835. C. P.

### Eschequer of Pleas.

ARREST WITHOUT REASONABLE AND PROBABLE CAUSE.—INDORSEMENT OF PROCESS.—COSTS.

*Under what circumstances a defendant will not be entitled to his costs under the 43 G. 3. c. 46, although the plaintiff may not have recovered a verdict to the amount for which the defendant has been arrested.*

This was an application on the part of the defendant, under the 43 G. 3. c. 46, to obtain his costs, on the ground of his having been arrested, without reasonable and probable cause, for a sum greater than the plaintiff had recovered by his verdict. It appeared that the action was brought for the recovery of a debt, alleged to be due by the defendant to the plaintiff for medical attendance, and board and lodging, bestowed and supplied by the plaintiff on the defendant. In the body of the writ of *capias*, by which the action was commenced, the plaintiff's demand was stated to amount to 37*l*. On the back of the writ, however, the sum indorsed, as the amount of the plaintiff's claim, was 27*l*. On the attention of the plaintiff being called to this discrepancy, he directed the officer to arrest or take bail for 27*l*. only. The officer accordingly only arrested for 27*l*. and for that sum the defendant, not being provided with bail, went to prison. When the trial came on, the plaintiff adduced evidence of a claim on his part for medical attendance, and board and lodging, to the extent of 28*l*. On examining the declaration, however, it was discovered that no count had been introduced for board and lodging. The plaintiff therefore was not entitled to recover for that branch of his claim. To prevent further legal proceedings therefore the plaintiff agreed to accept a sum of 20*l*. in full discharge of his claim on the defendant.

A rule was then obtained in order to give the defendant his costs under the 43 G. 3. c. 46, on the ground that although the plaintiff had arrested the defendant for 27*l*. he had not recovered more at the trial than 20*l*.

On shewing cause against this rule, it was contended, that the plaintiff had not been guilty of any misconduct in arresting the defendant for the sum of 27*l*. He certainly had reasonable and probable cause for an arrest to the extent of 27*l*. since his evidence shewed that his claim amounted to 28*l*. At the time he made

his affidavit of debt, the facts disclosed by that evidence were the foundation of his oath. At that time it was perfectly clear that he had reasonable and probable cause for arresting the defendant for a sum to the extent of that indorsed on the writ. The principle on which the courts had declared plaintiffs to be liable to the penalties contained in this clause of the 43 G. 3. c. 46, was to consider the knowledge the plaintiff had of his cause of action at the time he made his affidavit to hold to bail, or indorsed his process for bail. If at the time he made his oath he had no probable cause for arresting the defendant for a demand to the extent of the amount of bail directed by him to be taken, he was liable to the penalties of the statute. If on the other hand, from the knowledge he possessed of his case, he had ground for thinking his claim amounted to the sum for which he directed the defendant to be held to bail, he was not liable to those penalties. Now here it was most certain that he had good reason for thinking that his claim amounted to the sum for which he ordered the defendant to be held to bail. The cause of his not recovering to the extent of the sum for which bail was taken, was, not that he could not prove a claim to that amount, but from the accidental circumstance of the pleader having omitted to introduce a count of a particular description into the declaration. The case, therefore, was not at all within the principle on which the Courts had held that plaintiffs were liable to pay defendants their costs, on account of the variance between the sum recovered and the sum sworn to.

In support of the rule, it was submitted, that the Court could not look at the special circumstances of each particular case, and all the various motives which might operate on the mind of a plaintiff at the time he made his affidavit of debt. The principle was, that where there was a great discrepancy between the sum sworn to and for which bail had been taken, and the sum for which the jury found their verdict, the defendant was entitled to his costs against the plaintiff. Here, undoubtedly, there was a great discrepancy; for the sum for which the defendant was arrested amounted to 27*l*. and that recovered was only 20*l*. This therefore was a case in which the Court would be inclined to give the defendant the benefit of the statute, and compel the plaintiff to pay him his costs.

*Per Curiam*.—We think this is not a case in which the plaintiff can be said to have arrested the defendant, without reasonable or probable cause, for a sum greater than that which he ultimately recovered by the verdict of the jury. It appears that the plaintiff at the time he made his affidavit of debt, must have had good reason for swearing that the defendant was indebted to him in an amount equal to that for which he directed that bail should be taken. The case therefore is not within the act, and the rule obtained by the defendant must be discharged, with costs.

Rule discharged, with costs. *Preedy v. Macfarlane*. H. T. 1835: Excheq.



## NOTES OF THE WEEK.

## HOUSE OF LORDS.

*Bills for second Reading.**Title of the Bill. Proposer.*

Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Ecclesiastical Jurisdic- tions.	Lord Brougham.
Illegal Securities.	

*Third Reading.*

Oaths Abolition.	Duke of Richmond.
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## HOUSE OF COMMONS.

*Bills to be brought in.*

Law of Tenure.	Sir J. Campbell.
Law of Escheat.	Sir J. Campbell.
Prisoners' Defence.	Mr. Ewart.
County Coroners.	Mr. Cripps.
Poor Law Amendment.	Mr. Trevor.
Registration of Births, &c.	Mr. Wilks.
Tithes Commutation.	Chanc. of Excheq.

*Second Reading.*

Law of Libel.	Mr. O'Connell.
Bankruptcy Funds.	Master of the Rolls
Ecclesiastical Courts.	Attorney General.
Clergy Discipline.	Attorney General.
Dissenters' Marriages.	Chancellor of Exch.
Infants' Property (Ire- land).	
Contempts in Equity (Ireland).	

*In Committee.*

Abolishing Imprison- ment for Debt, &c.	Sir J. Campbell.
Copyholds Enfran- chisement.	Sir J. Campbell.
Highways.	Mr. Lefevre.
Registration of Voters.	Lord J. Russell.
	6th May

*Consideration of Reports.*

Execution of Wills.	Sir J. Campbell.
Law of Executors, &c.	Sir J. Campbell.

COMMITTEE ON THE BANKRUPT'S ESTATE  
BILL.

The Master of the Rolls, Mr. Rolfe, Mr. Attorney-General, Mr. Solicitor General, Sir J. Campbell, Mr. A. Baring, Mr. Hume, Mr. Warburton, Mr. Pemberton, Mr. Horace Twiss, Mr. Lynch, Mr. Pryme, Sir G. Grey, Mr. Robarts, Mr. A. Smith, Mr. Alderman Thompson, Sir R. Inglis, Mr. Crawford, Mr. Pattison, Mr. Freshfield, Mr. Bonham Carter, Mr. P. Stewart, Sir M. W. Ridley, Mr. Strutt, Mr. Tooke.

## IMPRISONMENT FOR DEBT.

On the motion of Mr. Tooke, a return has been ordered by the House of Commons of the number of writs issued between 1 Jan. 1834, and 1 Jan. 1835, out of the several Courts of Common Law, distinguishing bailable from serviceable process.

A like return has also been ordered of the number of executions issued, distinguishing those against the body from those against the goods; with an account of the sums of money recovered under each; and as regards the executions against the goods, setting forth the number of those under which the officers have withdrawn on account of claims on such goods, or for other and what reasons.

We trust these returns will be speedily made by the Signers of Writs of the Common Law Courts, and the several Undersheriffs, in order that the important information they will convey may be used in the next stage of the Abolition of Imprisonment for Debt Bill.

## CHANGE OF MINISTRY AND LAW OFFICERS.

The Ministry, as our readers are aware, tendered their resignation to his Majesty on Wednesday the 8th instant, in consequence of the repeated majorities against them on the question of appropriating the supposed surplus of the Irish Church Revenues. The Lord Chancellor, with the Attorney and Solicitor General, have also tendered their resignations. Rumour is busy with the names of their successors; but at the time we go to press, no certain information has transpired. It will be difficult to select members of the profession so eminent for legal knowledge, and so well qualified in all respects, as the late Law Officers of the Crown.

**CHANCERY SITTINGS,***Previous to and in Easter Term, 1835.***BEFORE THE LORD CHANCELLOR.***At Lincoln's Inn.*

Saturday . April 11	{ <i>Attorney Gen. v. Shore</i> , by order.
Monday . . . 13	Ditto.
Tuesday . . . 14	{ The Seal Day before Easter Term— <i>Attor- ney Gen. v. Shore</i> — and Motions.

*At Westminster.*

Wednesday . . . 15	Motions.
Thursday . . . 16	Petition-day.
Friday . . . 17	{ No Sittings.
Saturday . . . 18	
Monday . . . 20	
Tuesday . . . 21	
Wednesday . . . 22	Re-hearings & Appeals
Thursday . . . 23	Motions.
Friday . . . 24	{ Re-hearings & Appeals.
Saturday . . . 25	
Monday . . . 27	
Tuesday . . . 28	
Wednesday . . . 29	{ Motions.
Thursday . . . 30	
Friday . . . May 1	{ Re-hearings & Appeals.
Saturday . . . 2	
Monday . . . 4	
Tuesday . . . 5	
Wednesday . . . 6	{ Motions.
Thursday . . . 7	
Friday . . . 8	{ Re-hearings & Appeals.
Saturday . . . 9	
Monday . . . 11	
Tuesday . . . 12	Motions.

Such days as his Lordship is occupied in the House of Lords are excepted.

**BEFORE THE VICE CHANCELLOR.***At Lincoln's Inn.*

Tuesday . April 14	{ The Seal Day before Easter Term. — Mo- tions.
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*At Westminster.*

Wednesday . . . 15	Motions.
Thursday . . . 16	Petition-day.
Friday . . . 17	{ No Sittings.
Saturday . . . 18	
Monday . . . 20	
Tuesday . . . 21	
Wednesday . . . 22	{ Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Thursday . . . 23	Motions.

Friday . April 24	{ Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Saturday . . . 25	
Monday . . . 27	
Tuesday . . . 28	
Wednesday . . . 29	{ Motions.
Thursday . . . 30	
Friday . . . May 1	{ Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Saturday . . . 2	
Monday . . . 4	
Tuesday . . . 5	
Wednesday . . . 6	{ Motions.
Thursday . . . 7	
Friday . . . 8	{ Pleas, Demurrers, Ex- ceptions, Causes, and Further Directions.
Saturday . . . 9	
Monday . . . 11	Short Causes and ditto.
Tuesday . . . 12	Motions.

**COMMON LAW SITTINGS.****KING'S BENCH.***In Term.***MIDDLESEX.****LONDON.**

Wednesday April 22	{	{
Saturday . . . 25		
Monday . . . May 11	Tuesday . . . May 12	

*After Term.*

Thursday . . . May 14	Friday . . . May 15
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The Court will sit at eleven o'clock in term, in Middlesex; at twelve in London; and in both at half-past nine after term.

Causes untried on the Lists for the 22d and 25th of April, will be taken on the 23d, 24th, 27th, and 28th. None but undefended causes will be tried on the 11th and 12th of May.

**EQUITY EXCHEQUER.***Easter Term, 1835.**Lord Abinger.*

Thursday . April 16	Petitions and Motions.
Friday . . . 24	The like.

Saturday . . . 25	{ Paper of Exceptions, Pleas, Demurrers, and further Direc- tions.
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Thursday . . . 30	Petitions and Motions.
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Friday . . . May 1	{ Paper of Exceptions, Pleas, Demurrers, and further Direc- tions.
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*Mr. Baron Alderson.*

Saturday . . . 2	Causes.
Tuesday . . . 5	Ditto.

*Lord Abinger.*

Friday . . . 8	Petitions and Motions.
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Saturday	May 9	{ Paper of Exceptions, Pleas, Demurrers, and further Direc- tions.
		Mr. Baron Alderson.
Monday	11	Causes.
		Lord Abinger.
Tuesday	12	Petitions and Motions.

## EXCHEQUER SITTINGS.

Easter Term, 1835.

Wednesday	Apr. 15	
Thursday	16	{ Equity—Petitions and Motions.
Friday	17	
Saturday	18	{ No Sittings in Banco or Equity.
Monday	20	
Tuesday	21	
Wednesday	22	Error.
Thursday	23	{ Middlesex, Nisi Prius, 1st sittings.
Friday	24	{ Equity—Petitions and Motions.
Saturday	25	{ Do. Paper and General Business.
Monday	27	{ Middlesex, Nisi Prius, Special Paper.
Tuesday	28	Error.
Wednesday	29	{ Middlesex, Nisi Prius, 2d sittings, Special Paper.
Thursday	30	{ Equity—Petitions and Motions.
Friday	May 1	{ Do. Paper and General Business.
Saturday	2	{ London, Nisi Prius, 1st sittings. Equity— Causes.
Monday	4	{ Middlesex, Nisi Prius, Special Paper.
Tuesday	5	Equity—Causes.
Wednesday	6	{ London, Nisi Prius, 2d sittings, Special Pa- per.
Thursday	7	Ditto.
Friday	8	{ Equity—Petitions and Motions.
Saturday	9	{ Do. Paper and General Business.
Monday	11	Do. Causes.
Tuesday	12	{ Do. Petitions and Mo- tions.
Wednesday	13	

## ANSWERS TO QUERIES.

## Late of Property and Coespancing.

JOINT TENANCY.—WIFE.—ADMINISTRATION.  
P. 383.

I made a slight verbal mistake in my answer to this query, at p. 416; instead of "with respect to the second question, whether *C.* is entitled to his wife's interest in the shares without administration," &c. it should be—"whether *the husband of C.* is entitled," &c. In looking into the reports, I met with a case confirmatory of the three last cases I referred to—viz. *Bells v. Kimpton*, 2 Barn. & Adol. 273. (†)

EXECUTORY DEVISE.—DESCENT. P. 383.

I think *E.*'s claim is unquestionable. *B.* had an estate in fee, determinable on his dying without issue, with a limitation over to *C.* and his heirs, whose estate once vesting is absolute. *B.* has died without issue, and the limitation to *C.*'s heirs naturally takes effect. How the statute is to apply in this case, I cannot conceive; the question is not between parties claiming under the same ancestor; *E.* claims as heir to *C.*, *D.* as heir to *B.* No law of descent can decide between parties claiming as heirs of totally different persons: the question of whole or half blood has not the least to do with the case in point. T. O.

## THE EDITOR'S LETTER BOX.

The paper of "A Sufferer," on some objectionable matters at the Six Clerks' Office, shall be inserted. We wish the respectable gentlemen in that office would reform several petty grievances which annoy their clients, the solicitors, and save us from the unpleasant duty of animadverting upon them.

The Queries and Answers of S. B. S.; "Gradus;" W. H. S.; "Lector;" M.; "Aspiro;" R. C. S.; "A Subscriber;" D. T. C.; and G. Br., have been received.

We thank M. for his several communications, of which we shall avail ourselves.

The question on the Prolongation of Easter Term, shall have immediate attention.

We are informed, that on the motion for an Undersheriff to refund an alleged overcharge for a warrant (mentioned at p. 457), a rule nisi was granted, but no application has been made to make it absolute.

The Queries and Answers are unavoidably in arrear at present, and we hope our correspondents will send those only which are important, and in as concise a form as possible.

The English Municipal Corporation Report, or so much as concerns the Profession, will be immediately printed as an Appendix to this volume.

# The Legal Observer.

Vol. IX.

SATURDAY, APRIL 18, 1835.

No. CCLXIV.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## WHAT JUDGES MAY SIT IN THE HOUSE OF COMMONS.

WE shall here shortly enquire what persons holding or having held judicial situations, may sit in the House of Commons: and we believe that we shall find the rule to be, that a judicial office is no disqualification in itself, unless it be expressly made so by a resolution of the House, or by an Act of Parliament.

And first, with respect to England.—Down to the year 1605, the Judges even of the superior Courts do not appear to have been disqualified from sitting in the House of Commons; and we find that Thorp, a Baron of the Exchequer, was Speaker in the 31st year of Hen. 6;<sup>a</sup> but on the 9th of Nov. 1605, at the commencement of a new Parliament, the Committee of Privileges came to the following resolution on the point:

"Serjeant Snigg, } Attendants as Judges  
Lord Chief Baron, } in the Higher House.

"Not to serve here."—If a Serjeant, to serve here."<sup>b</sup>

The ground of the incapacity of the Lord Chief Baron thus assigned was, his liability to be called on by the House of Lords; and the rule here laid down has been ever since acquiesced in by the Judges of the superior Courts of Common Law. It has never however been recognized as applying to Masters in Chancery, although they are regularly summoned to attend the House of Lords, and are in fact constantly employed as the servants of the House. Mas-

ters in Chancery have therefore sat in the House of Commons down to the last Parliament, although we believe there is no Master in the present House of Commons.

The Master of the Rolls has always retained the privilege of being qualified to be so elected, and if he be a member, on the first day of the session, and other state occasions, appears in his judicial costume. The present Master of the Rolls is now the representative for the borough of Maldon.

The Chief Judge, the other Judges, the Commissioners, and the other officers of the Court of Bankruptcy, are ineligible to sit in Parliament, by the act<sup>c</sup> which created the Court.

By the 3 G. 4, c. 55, s. 14, it was enacted, that no justice at any of the eight police offices established in the counties of Middlesex and Surrey, should during his continuance in such appointment, be capable of being elected or of sitting as a member of the House of Commons; and the stat. 3 G. 4, c. 55, was continued to the year 1832, by the 10 G. 4, c. 45. Under the General Police Act, 10 G. 4, c. 44, s. 18, no justice of the peace appointed under that act can sit in the House of Commons. By the Reform Act,<sup>d</sup> no revising barrister shall for eighteen months from the time of his appointment, be eligible for the county or borough for which he was appointed.

The Chancellor of the Duchy of Lancaster cannot, it would seem, be a member of the House of Commons.<sup>e</sup>

Next, as to Scotland.—Judges of Session or Justiciary, or Barons of the Exchequer, (when that Court existed,) are declared in-

<sup>a</sup> Com. Dig. Parl. D. 9.

<sup>b</sup> Com. Journ. 1605, p. 257.

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<sup>c</sup> 1 & 2 W. 4, c. 56, s. 60.

<sup>d</sup> 2 W. 4, c. 45, ss. 41 & 49.

<sup>e</sup> Com. Journ. 30, 910.

capable of being elected, or of sitting or voting, in the House of Commons.<sup>f</sup>

No Sheriff Depute, or Steward Depute, is capable of being elected, or of sitting or voting, in the House of Commons.<sup>g</sup>

Lastly, as to Ireland.—No person holding the office of Lord Chancellor, Master of the Rolls, or being one of the twelve Judges of the Courts of King's Bench, Common Pleas or Exchequer in Ireland, or being a Master in Chancery there, shall be capable of being elected, or of sitting and voting, as a member of the House of Commons:<sup>h</sup> neither shall any member of the House of Commons be capable of holding the office of Assistant Barrister.<sup>i</sup>

With these exceptions, we believe that the holding a judicial office does not disqualify a person from being elected, and sitting and voting, in the House of Commons. It has of late years, however, been the feeling of the Legislature, on the creation of any new judicial situation, to render its holder ineligible to sit in the House of Commons.

This being the state of the law with respect to persons holding judicial situations, let us next see how far the having held such situations can disqualify any person who may have resigned them. And we think we may lay it down as a general rule, that any person not having a seat in the Upper House, is capable of being elected for and sitting and voting in the House of Commons, whatever judicial situation he has held, if no other cause prevents him. But in most cases where persons resign judicial situations, they receive pensions on their resignation; and if so, they would, in some instances, come within the provisions of the following statutes.

By the 6 Ann. c. 7, s. 25, no person having any pension from the Crown during pleasure shall be capable of being elected, or of sitting or voting; and by the 1 G. 1, st. 2, c. 56, s. 1, this act is extended to cases of pensions from the Crown for any term or number of years; and by the 2d sec. if any person so disqualified, shall sit and vote in the House of Commons, he shall forfeit 20*l.* for every day he shall so sit and vote. And by the 6 Ann. c. 7, s. 29, if any person thereby disqualified, or rendered incapable of being elected, shall sit or vote in the House of Commons, such person shall forfeit 500*l.*

"So that if a person," says Mr. Rogers,<sup>k</sup> "having a pension for a term of years, should notwithstanding procure himself to be elected, he would be liable to pay 20*l.* a day for every day he sat in the House; but a pensioner for life so offending would forfeit 500*l.*, though he sat but one day."

It appears to us, therefore, that under these acts the eligibility of a person, having resigned a judicial situation, and being granted a pension, to be elected, and sit and vote in the House of Commons, would depend on the terms on which his pension was granted. If it were granted for years, or during pleasure, then he would come within the express words of the act; if it was granted expressly for life, he might be held to be not within the acts.

## PROLONGATION OF EASTER TERM.

A question has arisen, whether Easter Term will end on the 12th or 13th of May. It appears that about one half of the Almanacks have calculated the Term as ending on the 12th, and the other half on the 13th.

The following is an extract from the 6th section of the 11 G. 4, and 1 W. 4, c. 70 (the Administration of Justice Act), under which the Terms were fixed:

"Easter Term shall begin on the 15th day of April and end on the 8th day of May; and if the whole or any number of the days intervening between the Thursday before and the Wednesday after Easter-day shall fall within Easter Term, there shall be no sittings in Banc on any of such intervening days, but the Term shall in such case be prolonged, and continue for such number of days of business as shall be equal to the number of the intervening days before mentioned, exclusive of Easter-day: and the commencement of the ensuing Trinity Term shall in such case be postponed, and its continuance prolonged for an equal number of days of business."

In favor of the construction that the 13th is the last day, the words "such number of *days of business* as shall be equal to the number of the intervening days before mentioned," are relied on; and that, as Good Friday and the following Saturday, and Easter Monday and Tuesday, are lost as "days of business," the Term must be prolonged, by adding Saturday

<sup>f</sup> 7 G. 2, c. 16, s. 4.

<sup>g</sup> Heywood on County Elect. 538; Journ. 25, 667.

<sup>h</sup> 1 & 2 G. 4.

<sup>i</sup> 36 G. 3, c. 25, s. 3.

<sup>k</sup> Rog. Elec. 64, 3d edit.

the 9th, Monday the 11th, Tuesday the 12th, and Wednesday the 13th May,—omitting Sunday as no day of business.

On the other hand, it is urged that the 12th should be the last day, inasmuch as the Sunday must be included under the 8 Reg. Gen. H. T. 2 W. 4, by which it was ordered, subsequently to the passing of the act, that “in all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.”

This computation is supposed to be fortified by the statute 1 W. 4, c. 3, s. 1, which enacts,

That “in case any of the days between the Thursday before and the Wednesday next after Easter shall fall within Easter Term, then such days shall be deemed and taken to be a part of such Term, although there shall be no sittings in Banc on any of such intervening days.”

The reply to this view of the matter, however, is, that although the four days in question, as well as the Sunday, form a part of the Term, they are not *days of business*; and we understand that although some of the officers of the Courts at first thought that the ordinary computation would prevail, yet the general opinion now appears to be, on the strict construction of the 6th sec. of the Administration of Justice Act, that the Sunday must be excluded, although not the last day, and therefore that the Term will be prolonged till Wednesday the 13th of May.

It may be further noticed, that the only other instance, since the passing of the act, in which Easter occurred in Term-time, was in 1832, and the Term then ended on the 12th; but in that year there was no Sunday intervening between the 8th and 12th, as on the present occasion.

We are not aware that the Judges have come to any formal decision on the point, but are informed that some of them have individually expressed an opinion to the effect that the Term must be continued till the 13th of May; and if this be so, Trinity Term will commence

on Wednesday the 27th of May, and end on Wednesday the 17th of June,—being (exclusive of Sunday) four days later than the usual time specified in the act. And the Sittings after Easter and Trinity Terms, as they will begin one day later than had been calculated, will be extended a day later, namely, till the 20th of May—being six days after Easter Term—and till the 15th of July, being twenty-four days after Trinity, Sundays excluded. See 11 G. 4; and 1 W. 4, c. 70, s. 7.

We must take this opportunity of observing, that although there appeared to be some advantage in appointing all the Terms at specific periods, that which has been fixed for Easter Term is lamentably inconvenient. One of our contemporaries (the *Morning Herald*) remarks, that “among the intended improvements, none seem to have more failed in their object than the alterations which have lately taken place in the periods of holding the Law Terms and Country Sessions. Thus we have the Easter Sessions, this year, occurring a fortnight before Easter, and during the time of holding the Assizes; and Easter Term commencing in Passion Week;—making business take the place of religion in one week, and of relaxation in the next.”

It would certainly have been better to select a later period, which could not have interfered with the Easter holidays; the inconsistency would then have been avoided, of holding the Courts during the adjournment of Parliament. The Easter recess was an agreeable resting point between Christmas and the Long Vacation; and these ancient holidays were well deserved by the members of our laborious profession.

## NEW BILLS IN PARLIAMENT.

### DISSENTERS' MARRIAGES.

(Concluded from p. 474.)

#### *Searches.—Notice of Impediment.*

9. That if any person shall in the forenoon, between the hours of *nine* and *twelve*, apply at the residence of any justice of the peace then having in his possession any such notice or notices of an acknowledgment or acknowledgments of marriage not then made, and shall then and there request of such justice to be allowed to inspect the same, he shall allow such person for a reasonable time to in-

spect them, or any of them; and if such justice shall have cause to believe that there exists any impediment, by kindred or alliance, or other lawful cause, to any marriage to be acknowledged before him, he shall not take the acknowledgment thereof; and where any person or persons whose consent is necessary to such acknowledgment shall, by writing delivered by him, her, or them, or one of them, or by any person on his, her, or their behalf, signify to any such justice then having in his possession any such notice of an acknowledgment not then made, his, her, or their dissent to the marriage therein mentioned and to be acknowledged, such notice shall be absolutely void.

#### *Illegal Marriages.—Evidence.*

10. That if any party shall knowingly and wilfully give any such notice required by this act as aforesaid which shall be false as regards the name or names of either of the parties thereto, and the other party shall knowingly and wilfully consent to the using of such false name or names, and thereupon any such acknowledgment be made in any name, or if the parties shall knowingly and wilfully make any acknowledgment before a person not being a justice of the peace acting for any county or place, or which shall be false as regards the name or names of either of the parties thereto, such notice and such acknowledgments respectively and the marriage so acknowledged shall be null and void to all intents.

11. That after any such taking of any acknowledgment it shall not be necessary in support of the marriage so acknowledged to give any proof of the actual dwelling of the party giving such notice as aforesaid in the hundred, city, borough, or franchise where he or she shall have given such notice, nor of the justice who shall have taken any such acknowledgment being a justice of the peace acting in and for such hundred, city, borough, or franchise as aforesaid, nor of both or either of the parties not being members of the united church of England and Ireland, nor shall any evidence be received to prove the contrary in any suit touching the validity of such marriage, or of the acknowledgment thereof.

12. That if any valid marriage acknowledged as aforesaid shall be procured by a party to such marriage to be acknowledged between persons one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this act, by means of such party wilfully falsely swearing as to any matter or matters to which such party is hereby required personally to swear, the estate, right, title and interest of the offending party accruing by force of such marriage shall be secured for the benefit of the innocent party and the issue of such marriage, or if both of the parties be offending, for the benefit of the issue of such marriage, by the like process and on the like terms and provisoes as in cases of marriages procured by like means and solemnized in England in the face of the church and accord-

ing to the rite of the united church of England and Ireland.

#### *Postage free.*

13. That all notices and acknowledgments sent as aforesaid from one such justice to another, or from any such justice to such minister as aforesaid, shall, if sent by the general post, be free from postage, provided that the cover containing the same be indorsed by the justice so sending as aforesaid with his name, and with the words "Marriage Acknowledgment Letter," and that nothing but what in good faith relates to such notice or acknowledgment be enclosed in the said cover.

#### *Definition of "Hundred."*

14. That where in this act mention is made of the word Hundred, the same shall be deemed to include all wapentakes, lathes, wards, rapes, and other districts in the nature of a hundred, by whatsoever name they may be respectively denominated.

#### *Fees.*

15. That before such acknowledgment of marriage shall be signed by the justice of the peace taking the same, the parties to the marriage shall pay a fee of *seven* shillings to such justice, whereof the sum of *five* shillings shall be received to the use of and be paid by him to the minister, to whom he is required to send such acknowledgment as aforesaid; and that every person requesting of any justice of the peace to be allowed to inspect any notice or notices of acknowledgment shall, before he shall so inspect the same, pay to such justice the sum of *one* shilling.

#### *Exceptions.*

16. That this act, or any thing therein contained, shall not extend to the marriages of any of the royal family: Provided also, That nothing in this act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers or persons professing the Jewish religion respectively.

17. That *two* printed copies of this act, together with a book adapted to the form prescribed for the acknowledgment of marriages in the schedule (B.) to this annexed act, shall, as soon as conveniently may be after the *passing of this act*, be provided by his Majesty's printer, and transmitted to the officiating ministers of the several parishes and chapels having registers of marriages in England respectively, and that *one* of such copies of this act shall be deposited and kept with the said book.

18. That this act shall extend only to that part of the United Kingdom called England.

**SCHEDULE.**

**FORM (A.)**

*Form of Notice to be given to the Justice of the Peace.*

To **J. P.**, Justice of the Peace in the County of

**A. B.** of the { Parish  
Chapelry  
or,  
Extra-parochial Place  
of Residence } of in the { County  
Riding  
or,  
Parts  
City  
or,  
Borough, &c. } of

and **C. D.** of the { Parish  
Chapelry  
or,  
Extra-parochial Place  
of usual Abode } of in the { County  
Riding  
or,  
Parts  
City  
or,  
Borough, &c. } of

do hereby give Notice, That we intend, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ at the hour of \_\_\_\_\_ in the forenoon, to acknowledge our Marriage before you.

Date of Notice. \_\_\_\_\_ (Signed) **A. B.**  
Place of Dwelling of **A. B.**

*Form of Declaration to be made and signed by both Parties.*

We, the undersigned, do hereby solemnly declare, That we are not members of the United Church of England and Ireland, and that we object to be married according to the rite thereof.

(Signed) **A. B.**  
**C. D.**

*The Form of the Oath of the Party who shall have given Notice to the Justice; and also the Form of the Oath of the other Party.*

I, **A. B.** of the { Parish  
Chapelry  
or,  
Extra-parochial Place  
of Dwelling } of in the { County  
Riding  
or,  
Parts  
City  
or,  
Borough, &c. } of

do swear, That I have dwelt in the said { Parish, Chapelry, or } of for seven clear days before the \_\_\_\_\_ day of \_\_\_\_\_ last past [the day of the date of the notice]; that I am of the full age of twenty-one years [or, that I am a { widower } or, that I have the consent of my { parents or guardians } to my marriage, or that there is no person duly authorized to consent to my marriage], and that I know of no impediment of kindred or alliance, or of any other lawful cause to bar the proceedings of my marriage now to be acknowledged with **C. D.** here present.

*The other party shall swear in like form and substance, except as to dwelling.*

**FORM (B).**

*Form of Acknowledgment to be given to the Justice, and accurately entered and copied by the Minister.*

Number.	Names of the Parties.	Name of the Parish, Chapelry, or Extra-parochial Place.	Name of County, Riding, Parts, City, Borough, &c.	Of full Age, or Widower or Widow, or with consent of Parents or Guardians, &c. [according to the Oath taken by each Party.]	Date of Acknowledgment.
1.	<b>A. B.</b> of  and  <b>C. D.</b> of	the Parish of <b>X.</b>   the Parish of <b>Y.</b>	Kent,   Sussex,	of full Age,   Consent of Parent,	did on this _____ day of _____ in the year of our Lord _____ acknowledge that they are united together in Matrimony.

Taken before me, a Justice of the Peace for the (County, Riding, Parts, City, Borough, &c.) of \_\_\_\_\_ on the said \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ at \_\_\_\_\_

(signed) **J. P.**

Signature of Parties { **A. B.**  
**C. D.**  
In the presence of { **J. K.** of  
**L. M.** of



PRACTICAL POINTS  
OF GENERAL INTEREST.

No. LXXVI.

## MASTER AND SERVANT.

It is a well settled rule of law, that an action on the case will lie against a master for an injury done through the negligence or unskilfulness of a servant, acting in his master's employ. Thus where the servant of *A.* with his cart, ran against the cart of *B.* which contained a pipe of wine, whereby the wine was spilled, an action was brought against *A.*, and was holden to be maintainable, 1 Lord Raym. 739. But where the trespass is a *wilful* trespass on the part of the servant, no action of trespass or case will lie against the master, and the servant only is liable. As where the servant of the defendant wilfully drove the defendant's chariot against the plaintiff's chaise; an action of trespass having been brought against the defendant, it appeared in evidence that the defendant was neither present at the time the injury was committed, nor had he in any manner directed or assented to the act of his servant; it was holden, that the action could not be maintained. In a recent case, a new distinction on this subject has been taken:

From the evidence on the part of the plaintiff, it appeared, that he was in Bishopsgate Street when he was knocked down by a cart and horse coming in the direction from Shore-ditch, which were sworn to have been driven at the time by a person who was the servant of the defendant, another of his servants being in the cart with him: the injury was a fracture of the fibula. On the part of the defendant witnesses were called, who swore that his cart for weeks before and after the time sworn by the plaintiff's witnesses, was only in the habit of being driven between Burton Crescent Mews and Finchley, and did not go into the city at all.

*Thesiger*, for the plaintiff, in reply suggested, that either the defendant's servants might in coming from Finchley have gone out of their way for their own purposes, or might have taken the cart at a time when it was not wanted for the purpose of business, and have gone to pay a visit to some friend. He was observing, that under these circumstances, the defendant was liable for the acts of his servants.

*Parke, B.*, He is not liable if, as you suggest, these young men took the cart without leave; he is liable if they were going *extra viam* in going from Burton Mews to Finchley; but if they chose to go of their own accord to see a friend, when they were not on their master's business, he is not liable.

His Lordship afterwards, in summing up, said, this is an action to recover damages for an injury sustained by the plaintiff, in consequence of the negligence of the defendant's servant. There is no doubt that the plaintiff has suffered the injury, and there is no doubt that the driver of the cart was guilty of negligence, and there is no doubt also that the master, if that person was driving the cart on his master's business, is responsible. If the servants, being on their master's business, took a detour to call upon a friend, the master will be responsible. If you think the servants lent the cart to a person who was driving without the defendant's knowledge, he will not be responsible; or if you think that the young man who was driving took the cart surreptitiously, and was not at the time employed on his master's business, the defendant will not be liable. The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master's implied commands, when driving on his master's business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable. As to the damages, the master is not guilty of an offence, he is only responsible in law, therefore the amount should be reasonable.

Verdict for the plaintiff, damages, 30*l.*

*Joel v. Morison*, 6 C. & P. 501.

## PROFESSIONAL GRIEVANCES.

## SIX CLERKS' OFFICE.

To the Editor of the *Legal Observer*.

Sir,

ANY reason or authority for "Six Clerks' Office Law," except from custom, originating and continued as suits the views of the expounders, your correspondent "Adviser" will look for in vain; and as for *services* being the criterion of payment, he surely cannot expect the clerks in court to adopt a principle in the taxation of costs which would leave them little or nothing to receive. For instance, I was concerned in a suit for the distribution of assets, and, as is the case in a few of the Masters' offices, the costs were taxed by the Master's principal clerk; neither he nor the solicitors required the attendance of the clerks in court, nor did they shew their faces; but yet, notwithstanding, for taxing costs, which they did not tax, a sum of about 15*l.* was appropriated to the clerks in court; and it being agency business, where the clerk in court took 6*s.* 8*d.* for not attending, the solicitor received 3*s.* 4*d.* only for attending and transacting the business.

I rejoice in the appearance of your correspondent's letter, as it has reminded me of my promise in your former numbers; and I cannot let slip this opportunity of expressing my delight at the successful institution and continuance of "The Legal Observer," affording,

as it does, an opportunity for attorneys to state their grievances upon the spur of the moment which would otherwise pass into oblivion in the hurry of business. I am in hopes it is the harbinger of a new era, and will create that "*esprit de corps*" which exists in all other professions, and do away with the truism, that in the attendance to the affairs of others the attorney neglects his own.

In my former observations as to the propriety of abolishing the service of notices, warrants, &c. at the Six Clerks' Office, I have omitted to mention the expense of the messengers conveying such papers from thence to the several solicitors, and which in general more than absorbs the whole sum allowed them for the term fee, as well as for letters and messengers. In agency offices this expense is much felt, and an extensive business only aggravates the grievance, for (whether there is any division of profits between the underlings of the clerks in court and the messenger, or not,) two notices or warrants never reach the solicitors at the same time; but the fact is undisputable, that one porter never carries more than one paper at a time, but his visits keep pace with the number of notices, and the solicitor consequently pays a fee for every paper left for him with his clerk in court; and woe be to the solicitor who, to endeavour to get rid of this vexatious impost, shall desire to have the notices sent to him by the post, for it will prove to be more convenient to put the notices in the general post, or in the outskirts of the town, rather than in the twopenny post office in Chancery Lane, and the unlucky wight will rarely have the notice or warrant reach him until it is too late to attend the appointment it may specify.

Your constant reader,  
A SUFFERER.

## ON THE RIGHT TO BEGIN.

SOME cases on the respective rights of the plaintiff and defendant to begin, have been reported in the last volume of Carrington and Payne's Reports, which we shall here mention.

The fifteen Judges have made a resolution, that the plaintiff shall begin on the trial in all actions for personal injuries, libel, and slander, although the general issue may not be pleaded, and the affirmative be on the defendant. *Carter v Jones*, 6 C. & P. 64.

In an action of trespass, for taking goods, the defendant, without pleading the general issue, pleaded that the house of the plaintiff was "within and parcel of the parish of M," and that he, being a constable, took the goods under a warrant of distress for parochial rates. The replication stated that the house was not within or parcel of the parish of M. The plaintiff's counsel claimed the right to begin,

as they had to prove the demand of perusal and copy of the warrant. This the defendant's counsel offered to admit: Held, that the defendant had the right to begin. *Burrell v. Nicholson*, 6 C. & P. 202.

In assumpsit for work and labour, the defendant pleaded that the "promise was made to the plaintiff and J. P., and not to the plaintiff alone". Replication, that the "promise was made to the plaintiff alone, and not to the plaintiff and J. S.": Held, that on this issue the plaintiff ought to begin. *Davis v. Evans*, 6 C. & P. 619.

In an action by the indorsee of a bill of exchange against the acceptor, the defendant pleaded, first, that the bill was accepted for a debt from which he was discharged by the Insolvent Debtors' Act, of which the plaintiff at the time of the indorsement had notice; and, secondly, that the bill was accepted to induce the drawer not to oppose the discharge of the defendant under that act, of which at the time of the indorsement the plaintiff also had notice. The plaintiff, in his replication, denied the notice stated in each of the pleas: Held, that on these issues the defendant must begin, and that the onus of proving that the plaintiff had notice was on the defendant. *Warner v. Haines*, 6 C. & P. 814.

If in an action for false imprisonment, the defendant plead as a justification, that the plaintiff stole feathers, and that he was therefore imprisoned, and the plaintiff reply *de injuria*, the plaintiff is entitled to begin, although the affirmative is on the defendant, and there is no general issue. *Atkinson v. Warne*, 6 C. & P. 687.

If, in assumpsit on bills of exchange, with a count upon an account stated, the defendant plead payment to the counts on the bill, and non assumpsit to the account stated: Held, that the defendant is entitled to begin, unless the plaintiff's counsel have some evidence to give upon the account stated. *Smart v. Royner*, 6 C. & P. 721.

A party gave a check for the amount of a deposit on a sale by auction, and the sale was void. In an action on the check, he pleaded that there was no consideration for the check, and the plaintiff replied that there was consideration: Held, that on this issue the defendant must begin. *Miles v Oddy*, 6 C. & P. 728.

In covenant, to recover damages for the non performance of an agreement under seal, if the defendant plead only that the deed was obtained by fraud and covin, the affirmative of the issue being upon him, his counsel has a right to begin, although the damages are uncertain, and evidence is necessary to guide the jury in forming their estimate of them. *Reeve v. Underhill*, 6 C. & P. 773.

## SUMMARY OF EVIDENCE UNDER THE MUNICIPAL CORPORATION COMMISSION.

We have published, as an Appendix to the present volume, the whole of the Report of the Commissioners for inquiring into Municipal Corporations in England and Wales; and consider it desirable to extract the following summary of Sir Francis Palgrave, one of the Commissioners.

1. Upon examination of the evidence afforded by the reports, it appears, that taking the municipal system as a whole, the ancient efficiency of the corporate institutions of England and Wales is diminished, and in some particular instances nearly destroyed. But the comparative weakness and decreased efficacy of corporations has not resulted from the default of the present members of these communities, and must rather be imputed to the inattention of the legislature. Whilst every other portion of the policy of the realm has been gradually adapted to the progress of society, the improvement of municipal law has been wholly neglected. And municipal corporations are labouring at present under the incumbrance of institutions which have ceased to harmonize with the general system of our jurisprudence, and the influence of privileges and immunities, which, however injurious they may have become, have, up to the present day, been created, protected, and fostered by the law.

2. Yet at the same time that the circuit reports clearly point out the defects of the municipal system, it is satisfactory to observe, that on the whole the general character of the governing bodies stands fair, though the individuals composing them have long been exposed to the great temptations of opportunity and impunity. Acts of injustice, oppression, or malversation, have very rarely occurred. The improprieties of a municipal magistrate, though not imputable to the corporation, are so far municipal abuses, that in such a case the subject does not possess that power of appealing to the equitable authority of the crown, which is exercised by striking out from the commission of the peace any justice whose misconduct may have rendered him unfit to continue as a magistrate, but whose offence or taint of character may not come within the cognizance of a court of law. It may be considered whether the provisions of the existing laws, in relation to proceedings against magistrates, might not be so modified, at least in relation to corporate magistrates, as to enlarge the strictly legal remedy, and to render it less difficult to the suitor. Nor would it be at all unreasonable, that in cases where the aggrieved party is incapacitated by poverty or other causes from seeking redress, the appeal to a court of justice should be diligently conducted by a public prosecutor, and at the public expence. Furthermore, it

would be expedient that all municipal magistrates and members of municipal councils should be amovable by some speedy mode of procedure, in cases of felony, grave misdemeanour, bankruptcy, insolvency, or neglect of the functions entrusted to their charge.

3. The partial exception of the corporate jurisdictions from the operation of the recent statutes for the amendment of trial by jury, has allowed many evils to continue in full vigour; and especially in certain of the smaller boroughs, in which, according to the local customs, the jury must consist of burgesses or freemen. In such places the difficulty of procuring an unbiassed jury, particularly in cases where local feelings are excited, may amount virtually to a denial of justice.

The branches of criminal jurisdiction possessed by corporate magistrates, beyond that of ordinary justices of the peace, are derived from an age when the right of inflicting capital punishment was considered as a regality and token of honor, when each community strove to separate itself as much as possible from the rest of the state, and when the exemption from the general jurisdiction of the realm was deemed to be a valuable privilege. For the advantage of the country, it is highly desirable that these privileges should be modified, and that the recorders, or other presiding judges in the criminal courts of corporations, should be persons properly qualified by professional education and standing; but this, as well as every other suggestion, relating to the borough courts, can only be considered in connexion with the question of the general establishment or organization of local courts, and other subjects not within the purview of the present commission.

4. Partly from the foregoing causes, partly from those indicated in a subsequent section, (7.) and partly from want of sufficient funds, the police of corporations is almost universally defective; and the same remark applies to the management of the gaols and prisons.

5. Many corporate bodies possess the right of levying tolls, and enjoy other privileges, sometimes disadvantageous, and often inconvenient to the rest of the community. It is evident that such rights should, when practicable, be extinguished, giving full compensation to the parties interested therein.

6. Instances of peculation, or the collusive disposal of corporate property, for the benefit, either direct or indirect, of members of the ruling bodies, are rare, and few cases of such misappropriation have occurred of late years. Yet the law should prevent even the suspicion of such a gross abuse. And it is highly expedient that the management and disposal of corporate property should be regulated so as to prevent its application to any purposes except what are strictly municipal, and for the benefit of the town; and that in every case the accounts should be rendered to the main body of the freemen, or others to be included in the municipal community, and for whom the ruling body, however elected, nominated, or constituted, or appointed, ought to be considered as trustees. In the whole of their financial con-

cerns, the city of London offers the best example to other corporations; and very particularly so in the self-denying ordinance, by which the members of the common council are prevented from deriving any profit from the corporate concerns.

7. Important defects, however, remain to be considered, of which perhaps the most influential is,—the absence in the ruling bodies of the requisite authority for an effective municipal administration. The Crown, by its ancient prerogative, and it possesses no other, is incompetent to impart by charter, the jurisdictions, rights, and powers which, by the general course of the law and policy of the realm, and the habits and usages of modern society, are requisite for the good government and management of a modern town. The Crown can confer, if it pleases, upon the most inconsiderable corporation, the unlimited power of criminal jurisdiction, but it cannot enable the magistrates of the largest commercial city to hold a court of requests for the recovery of small debts by summary process. The Crown can grant *prærogative* to a corporation, but it cannot grant them the summary power of removing a projection over the footpath. The Crown can grant *prærogative* to a corporation, but it cannot grant them the power of enforcing the sale of the smallest portion of ground which may be necessary for erecting the abutments of a bridge. The Crown can grant the conservancy of the peace to a corporation, but it cannot grant the compendious powers of levying rates and penalties, and effecting the arrangements by which a town police can alone be maintained and regulated. In these and all similar cases, the plain and proper course would have been, to have conferred upon the Crown, once for all, but under all proper restrictions for preventing any abuse of the prerogative, the authority of dispensing to the corporate authorities the power of exercising the functions which they need. But instead of thus providing a source of corporate renovation, the practice has been adopted of applying to parliament for local acts, creating various boards, trusts, and other similar bodies, independent of the corporations, and often in direct conflict with them, and thereby preventing the municipal magistrates from having the power and influence which a ruling body ought to possess, and which are now vested in other hands.

8. Another great defect is, the want of sufficient connexion between the corporate institutions and the inhabitancy of the town. At present the freemen of the corporation form only a small, and generally the smallest, portion of the population; whilst it cannot be doubted but that all individuals dwelling or pursuing their trades or avocations in the town, or holding property therein, should (under such restrictions only as may render the burghership a sufficient test of stability and trustworthiness) be aggregated to the municipal community.

9. In many corporate towns dissensions exist between the ruling bodies and peculiar sects, sections, classes, or portions of the inhabitants.

Very frequently these animosities have plainly arisen from the habitual hostility of party, and from other similar adverse sentiments, rather instigated by passion than grounded upon any sufficient reason—sentiments requiring to be conciliated, calmed, and allayed by the legislature, but which it never ought to obey. Among other causes, it is probable, that in the smaller towns, the circumstance of individuals being raised by their official station above persons of their own rank in society, and other feelings purely local and personal, may have tended to increase these animosities. Some towns perhaps scarcely contain within them the materials for a municipal establishment. In these cases it may be expedient to adopt measures for the partial or total extinction of the municipal franchises of such corporations; legal proof being nevertheless given of the fact, and sufficient opportunity being afforded to all parties interested to shew cause (if they shall so think fit) against such disfranchisement.

10. In the larger and more important towns, it is probable, that the efficacy of municipal institutions will be increased, by rendering the municipal magistracy and councils elective by the freemen, upon the assumption that not only the inhabitants, but also the owners of property, are to be aggregated to the municipal community. The magistrates or members of the upper bench to hold their offices for life, subject to removal for the causes before indicated (sec. 2.) The councils to hold their office for a stated term. It appears, however, that great mischiefs arise from the circumstance of municipal elections being rendered trials of strength for contending parties on parliamentary elections; and, without presuming to point out any measures by which this great evil is to be counteracted, it becomes necessary to call the attention of the legislature to its existence. That all the members of the municipal magistracy and councils should possess a qualification arising from property, is a proposition which will be recommended, amongst other reasons, by adverting to the fact, that in the great majority of local acts, erecting boards of trustees or commissioners, for purposes, which in fact are municipal, some qualifications founded upon property is required; thus affording evidence that, by experience, it is found advantageous to connect the performance of duties with possession of property. But whatever plans may be adopted for altering the constitution of municipal corporations, the diversity of the local and particular circumstances of the towns, as well as the necessity of obtaining the deliberate opinions of the inhabitants, will probably render it expedient, that the change should be effected, not by a general enactment, but by a special adaptation of general principles to each corporation which may require the same; such adaptation to be effected through some competent tribunal.

## SUPERIOR COURTS.

## Vice Chancellor's Court.

## WILL.—RESIDUARY CLAUSE.—SOLICITOR AND CLIENT.

*Held, that where the confidential professional adviser of a testator, in drawing the will, in which he is made executor or residuary legatee, omits, from fraud, ignorance, or inadvertence, to inform the testator of the legal consequences, or of the state of his property, he is a trustee of the residue for the testator's next of kin. But fraud will not be inferred where the testator appears to have a competent knowledge of the state of his property, and of the consequences of his acts, and a third party is interposed.*

This was a suit on behalf of Mrs. Scott, the niece and next of kin of a testatrix, named Marshall, against the defendant, who had acted as her confidential solicitor and adviser, and who had been appointed residuary legatee by her will. The testator,—who was described as a person of most penurious habits—became possessed of considerable property on the death of her brother; and after making a great number of wills and revoking and altering them by subsequent codicils, she died in 1826, at the age of 84, having by her last will bequeathed some small legacies to her relations, and appointed Mr. Baker residuary legatee, of a large personal estate. The plaintiff, who had been named residuary legatee under a former will, had unsuccessfully contested the validity of the last will, in the Ecclesiastical Courts; and she sought by the present suit to have it declared, that Mr. Baker was a trustee of the residue for the testatrix's next of kin; alleging the incompetency of Mrs. Marshall, by reason of mental imbecility and bodily infirmity, to make a will; and the fraud and circumvention of Mr. Baker in having concealed from her, in his character of solicitor, the amount of her property; and having fraudulently obtained himself to be appointed residuary legatee to the great bulk of it.

Sir Charles Wetherell (with whom was Mr. Anderdon,) for the plaintiff, contended that the circumstances of the case were such as to give the Court a jurisdiction to interfere, although probate had been granted to the will, *Marriott v. Marriott*,<sup>a</sup> and *Segrave v. Kirwan*.<sup>b</sup> The circumstances of this last case were not unlike those of the present. There a gentleman at the Irish bar, who had been for many years the confidential counsel of a testator, whose will he drew, was himself therein named sole executor. The residue of that testator's personal estate undisposed of was very considerable, and would at the time by the law in Ireland go to the executor. The next of kin of that testator filed their bill,

praying that the executor might be declared a trustee of the residue for their benefit. There was no fraud in the transaction, nor did the bill charge any against the defendant; but he, from ignorance, or inadvertence, omitted to inform the testator of the legal effect of making himself executor. Upon that ground, the defendant there was held to be a trustee of the residue for the next of kin; "for it was the duty of counsel to know and to inform the testator, that if he made no disposition of his personal estate, the law would entitle the executor to retain it for his own benefit. He, therefore, was bound to ask the testator in plain terms, whether it was the testator's desire that the executor should have the residue of the personal estate for his own benefit." Sir Anthony Hart, who, as Lord Chancellor of Ireland, decided that case, after much consideration, is reported to have also said, that "it could not be controverted that the Ecclesiastical Court has exclusively the power to decide what is or is not a will of personality; its seal to a probate is conclusive in every court of justice; but it is equally clear that to this Court belongs the authority to give construction and effect to the will, and that there may be circumstances attaching personally to those who take by force of it, which will authorize this Court to engraft an equity on the gift, and convert them into trustees for other persons." This doctrine was sanctioned by Lord Eldon in the case of *Bulkely v. Wilford*,<sup>c</sup> decided upon appeal last summer in the House of Lords; that also was a case of fraud and ignorance in an attorney, who was the defendant in it. Of the judgment of Lord Eldon in that case—the last and not the least elaborate of the judgments of that learned person—he (Sir Charles) obtained a note from a gentleman who reports the cases in the Lords for the profession, and he found it to apply strongly to the present case, and to support Sir Anthony Hart's judgment in the case cited.

The Vice Chancellor said it was unnecessary for the counsel of Mr. Baker to address the Court. He admitted the case had been argued with great ingenuity and force by Sir Charles Wetherell; but, upon reading the bill, he had not been able to satisfy himself that the particular point on which the very clear argument of Sir Charles turned, was put in issue in the cause. What was meant to be said was, that even admitting Miss Marshall to have been competent to make a testamentary disposition, she had been so deceived by Mr. Baker, her confidential solicitor, in making the residuary clause in her will of 1826, that on that ground alone he ought to be considered a trustee for others. When he first read the bill, he was struck with the superabundance of allegations of incompetency on the part of the testatrix, and of the fraudulent conduct of Mr. Baker.

<sup>c</sup> The case will, we understand, be reported in the forthcoming volume of Clark and Finnelly's Reports.

<sup>a</sup> 1 Strange, 166.

<sup>b</sup> 1 Beatty, 157.

It charged that "the will was procured to be executed by the fraud, imposition and deceit, and circumvention of Mr. Baker, in taking an undue advantage of Mrs. Marshall," who was induced, by reason of mental imbecility, to make a testamentary disposition different to what she otherwise would have made. It was obvious the case was not put upon the point on which Sir Charles Wetherell meant it to rest. With respect to general incompetency, that was wholly out of the case. But, according to the argument of the learned counsel, and in fact the real question was, whether, attending to the sort of evidence given in this cause, there was ground to say there had been anything like fraud in obtaining the residuary bequest, or whether the circumstances are so pregnant with suspicion as to require the matter to go to a trial. Putting then the evidence as to her general incompetency out of the question, it was in evidence that she had, for a series of years, been in the habit of making different residuary dispositions. But a residuary disposition necessarily involves uncertainty of amount; and there was no evidence that she had been imposed upon by Mr. Baker, as to the probable amount of her property. The whole evidence went to shew she was very penurious; and when it is considered what a number of wills and codicils she made, and what a secluded life she led, it is evident it results from her character,—that her whole attention must have been directed to her property; and she must, of necessity, have known from the amount of her income, and her trifling expenditure, that the thing given as residue would depend on the time she might happen to live. After she had suggested to Mr. Baker her fancy to make him her residuary legatee, he endeavoured to dissuade her from it; and then, when he found she would have it so, another solicitor, Mr. Knight, was introduced to her, who prepared the will, and read it over to her; and so well did she know on this occasion what she was about, that she anticipated him in stating the amounts of the legacies she had directed him to give to different persons. From beginning to end, the thing was done in as fair a manner as was possible; there was no fraudulent concealment or withholding any communication of the state of her property, which she should have had or required to have. His opinion was, therefore, that the plaintiffs failed in law, merely because they had no facts in evidence to authorise the application of the law; for he was desirous of its being understood that he entirely concurred with Sir Charles Wetherell in his able exposition of the law as laid down in the cases cited. The bill must be dismissed; and fraud being imputed of the grossest manner, it must be dismissed with costs.

*Scott v. Baker*, at Westminster, January 22d, 23d, and 24th, 1835.

### King's Bench Practice Court.

CROWN DEBTOR.—COMMON INFORMER.—INSOLVENT ACT.

*Without the consent of the crown, the Court will not allow a qui tam action for penalties to be compounded.*

This was an application to compound a *qui tam* action, pursuant to the 18 Eliz. c. 5. It did not appear that the applicant had obtained the consent of the crown to compound.

*Putteson, J.*, said, that he could not allow the action to be compounded without the consent of the crown, as otherwise the Court would be dealing with the interests of the King without his authority.

Rule refused.—*Fry, qui tam, &c. v. George*, H. T. 1835. K. B. P. C.

### Eschequer of Pleas.

PLEADING.—TRESPASS.—JUSTIFICATION.—EVIDENCE.—TWO ASSAULTS.

*If a plea justifies more assaults than necessary from the state of the pleadings, it will not be required that the defendant should prove his unnecessary justification.*

This was an action of trespass for an assault. In the declaration the plaintiff only complained of one assault. The defendant however put a justification in his plea, of two assaults. At the trial the defendant only proved a justification of one assault, and the jury found a verdict for the defendant.

An application was made the following term to set aside the verdict found in favour of the defendant, and enter one for the plaintiff, on the ground that the whole of the justification mentioned in the plea had not been proved by the defendant.

The Court was however of opinion, that although the defendant had gone further in his plea than was necessary according to the allegations in the declaration, yet that did not render it necessary for him to prove the whole of the justification thus unnecessarily alleged. The whole of the trespasses set forth in the declaration were justified, and the justification proved. That was all the defendant could be required to do. The verdict in his favour was therefore right. No ground consequently existed for disturbing it.

Rule refused.—*Atkinson v. Warne*, H. T. 1835. Excheq.

\* A very important question arises on consideration of this case, with respect to insolvent debtors, who are in custody on judgments on *qui tam* actions. It is conceived, that in such cases, the Court of Insolvent Debtors has no power to discharge a debtor under such circumstances.

By s. 74 of 7 G. 4, c. 57, (the General Insolvent Act), it is provided, "that this act shall not extend or be construed to extend to discharge any prisoner seeking the benefit thereof, with respect to any debt due to his Majesty or his successors, or to any debt or penalty with

**BILL OF EXCHANGE.—PLEADING.—INDORSEMENT AND ACCEPTOR.—JUDGMENT NON OBSTANTE VEREDICTO.**

*After a verdict, the Court held a plea to have been sufficient by an acceptor, to an action by an indorser, which stated that the bill had been indorsed by the defendant to the plaintiff, without having or receiving any consideration.*

This was an action on a bill of exchange accepted by the defendant and indorsed to the plaintiff.

The defendant pleaded—1st, That the bill had been indorsed by him to the plaintiff, *without having or receiving any value or con-*

*which he or she shall stand charged at the suit of the Crown, or of any person for any offence committed against any act or acts of parliament relative to any branch of the public revenue; or at the suit of any sheriff or other public officer, upon any bail-bond entered into for the appearance of any person prosecuted for any such offence, unless three of the commissioners of his Majesty's treasury for the time being, shall certify under their hands their consent to such discharge."* On the words of this section alone, it should seem that the Commissioners of the Insolvent Court have no power to discharge a defendant, as the forfeiture of one half of the penalty comes within the sixteenth head of the King's ordinary revenue, according to the classification of Sir William Blackstone. (Commentaries, vol. 1, p. 299.) He there observes, "the next branch of the King's ordinary revenue, consists in forfeitures of lands and goods for offences; *bona confiscata*, as they are called by the civilians, because they belonged to the *fiscus* or imperial treasury; or as our lawyers term them, *forisfacta*; that is, such whereof the property is gone away, or departed from the owner."

Should there be any doubt, however, on the construction of the act itself; if we consider the other provisions of the statute of Elizabeth, and the construction put on them by the Courts, no doubt will remain that the Insolvent Commissioners have no power to discharge a debtor confined on a judgment in an action, brought on a popular statute for penalties, when part of them go to the Crown.

By s. 3 of that statute, it is provided, "that no such informer or plaintiff shall or may compound or agree with any person or persons that shall offend, or shall be surmised to offend against any penal statute for such offence committed, or pretended to be committed, but after answer made in Court unto the information or suit in that behalf exhibited or presented; nor after answer, but by the order or consent of the Court in which the same information or suit shall be depending, upon the pains and penalties hereafter in this present act set down and declared: and if any such informer or plaintiff as aforesaid shall willingly delay his suit, or shall discontinue or be nonsuited in the same, or shall have the trial or matter past against him therein by verdict or judgment of law, that then in every such case

sideration whatsoever for or in respect of the said indorsement thereof, and that the defend-

the same informer or plaintiff shall yield, satisfy, and pay unto the party defendant his costs, charges, and damages, to be assigned by the Court in which the same suit shall be attempted; for the recovery and execution whereof every such defendant shall immediately upon the same costs, charges, and damages assigned, have his *capias ad satisfac.*, *ferri facias*, or *elegit*, to be awarded unto him out of the same Court in which the same shall be so assigned as is aforesaid, as in other cases of execution." Then by s. 4, it is enacted, "that if any person or persons (except the clerks of the Court only, for making out of process otherwise than as is above appointed), shall offend in suing out of process, making of composition, or other misdemeanour contrary to the true intent and meaning of this statute, or shall by colour or pretence of process, or without process, upon colour or pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward for himself, or to the use of any other *without order or consent of some of her Majesty's Courts at Westminster*; that then he or they so offending, being thereof lawfully convicted, shall stand on the pillory in some market town next adjoining where the same offence shall be committed, in the open market time, and there remain for the space of two hours; and shall from and after such conviction for ever be disabled to pursue, or be plaintiff or informer in any suit or information upon any statute popular or penal; and shall also for every such offence forfeit and lose ten pounds of lawful English money, the one-half thereof to the Queen's Majesty, her heirs and successors, and the other half to the party grieved thereby, to be recovered in any court of record, by action of debt or information."

From the words of the statute, it must be clear, that such an action cannot be compounded without the authority of a superior Court at Westminster.

The next question is how, and on what state of facts, that authority is to be obtained? The earliest reported case on the act, appears to be that of *Bradshaw, qui tam, v. Motram*, 1 Strange, 167; where the Court, on an affidavit of the defendant's poverty, in an action *qui tam* for penalties under the Stamp Act, for marrying without licence, allowed the action to be compounded. There, it will be observed, special circumstances existed to authorize the Court to interfere by allowing the action to be compounded. It does not appear whether the consent of the Crown had been obtained; the presumption is that it was. In *Houard, qui tam, v. Sowerby*, 1 Taun. 103, the decision was, that the Court will not grant permission to compound a penal action, in which part of the penalty goes to the King, unless the consent of the Crown is previously signified, whether a verdict has passed for the plaintiff or not.

In *Cowder v. Wagstaff*, 1 Bos. & Pul. 18, the Court decided that it will not give leave

ant had not at any time *had* or *received* any value or consideration whatsoever for or in respect of such indorsement.

2dly, That after the making of the promises

to compound in a penal action after verdict, unless the defendant can shew circumstances which entitle him to such an indulgence. There Chief Justice *Eyre* said, "What case do you make for such indulgence? We cannot pay attention to the consent of the plaintiff after verdict. I do not know that the Court can do this without the consent of the Attorney-General. It is no longer compounding—the debt is ascertained—the suit is at an end—and the Crown may interfere. Here the affidavit states no circumstances to entitle you to this indulgence, if we were at liberty to grant it; at least you ought to state a case of favour. You must pay the whole money into Court." From this case it should seem, that if the money were paid into Court, leave would be given to compound, even if the Crown did not consent. But in *Sheldon, qui tam, v. Mumford*, 5 Taun. 268, the Court decided that it will not permit a defendant in a *qui tam* action to compound, unless the counsel for the Crown are instructed to consent on behalf of the Treasury. There the action was to recover penalties for usury, and the affidavit by which the application to compound was supported, stated that 350*l.* had been paid by the defendant to the plaintiff, and 350*l.* to the King, and that notice had been given of the motion to the Treasury. The Court, however, refused in that case to interfere. The report does not shew whether the sum of 350*l.* paid to the King, was half the penalties which the plaintiff was entitled to recover. The case of *Mnugham, qui tam, v. Walker*, 5 T. R. 98, only shews that under certain circumstances, the Court will give leave to compound a penal action.

The conclusion to be drawn from the provisions of the statute, as well as the decisions on it, appears to be this: that as soon as the law has been set in motion by a common informer, *qui tam*, an interest in the penalty is vested in the Crown, and that interest can only be defeated by payment of the full amount of the Crown's share of the penalty into Court, or by the Crown's consent.

The provisions of s. 99 of 1 Reg. Gen. H. T. 2 W. 4, are in accordance with this view. The words of that Rule are—"Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall have been given to the proper officer; but in other cases it may."

Seeing, then, that the Superior Courts at Westminster will not give leave to compound such an action without the consent of the Crown, an inferior Court, like that of the Commissioners of Insolvent Debtors, cannot, without the Crown's consent, interfere with the ascertained debt due to the Crown.

In accordance with this view was the decision of Commissioners *Boren* and *Harrie*, some days since, at the Insolvent Court, in the case of an insolvent named *Keeling*.

so far as the same relate to the said bill of exchange in the said first count mentioned, and before the commencement of this suit, to wit, on the 18th day of September, 1832, *he, the defendant, paid to the plaintiff* the amount of the said bill of exchange, and the defendant then accepted and received the same in full satisfaction and discharge thereof, and of all damages in respect thereof.

3dly, That after the said bill became due and was so presented as aforesaid, to wit, on the 19th day of September, in the year aforesaid, *one Peter Maddocks paid to the plaintiff* 50*l.*, on account of and in part payment of the said bill, which the plaintiff then accepted and received in full satisfaction and discharge of 50*l.*, parcel of the said sum of money in the said bill specified, and the defendant then paid to the plaintiff the residue of the amount of the said bill of exchange, which the plaintiff then accepted and received in full satisfaction and discharge of the said bill of exchange, and of all damages in respect thereof, and of all claim whatsoever thereupon against the said defendant.

The plaintiff replied to the first plea, "That the defendant heretofore and at the time of indorsing the said bill to the plaintiff, as in the said declaration is mentioned, to wit, on the same day and year in the said declaration in that behalf mentioned, *had and received* from the plaintiff a good and sufficient consideration for and in respect of the said indorsement of the said bill to him the plaintiff as aforesaid." Issue was taken upon the other pleas.

The cause came on for trial, and the jury found by their verdict that the bill was an accommodation bill, and that there was no consideration for the indorsement.

A rule nisi was afterwards obtained to sign judgment for the plaintiff *non obstante veredicto*, on the ground that the first plea was bad after verdict.

Cause was afterwards shewn against this rule.—It was contended, that although the plea might be uncertain, yet after a verdict the defect was cured. It was a general rule in pleading, that if a party pleaded a pleading which was equivocal in its nature, if the opposite party pleaded over, it must be taken in the sense which would support the antecedent pleadings. Here it must be taken that the allegation in the plea meant a money consideration. The plea might perhaps be bad on special demurrer, but was clearly cured by the verdict. It might have been held ill if the objection had been taken in an earlier stage of the proceedings; but it was now too late, by a motion for judgment *non obstante veredicto*.

In support of the rule, it was submitted, that the plea was bad in point of law altogether, and not merely equivocal, so that the passing of the verdict would cure the defect. Being bad, the plaintiff was entitled to obtain judgment *non obstante veredicto*.

The Court was of opinion that the plea might have been objectionable on special demurrer, but the defect had been cured by the finding of the jury. The rule must therefore



be discharged which the plaintiff had obtained for entering a verdict *non obstante verdicto*.

Rule discharged.—*Euston v. Pratchett*, H. T. 1835. Excheq.

**EXECUTOR'S COSTS.—MASTER'S TAXATION.—PROMISES TO TESTATOR.—PROMISES TO EXECUTOR.**

*The new act with respect to the costs of executors, can only be made available in those cases wherein by the previous law unsuccessful executors were not compellable to pay costs, and the application for that purpose must be made promptly.*

In this case an action was brought by the plaintiffs, as executors, against the defendant, to recover a certain sum of money alleged to be due from the latter.

In the declaration were counts on promises alleged to have been made to the testator during his lifetime, and to the plaintiffs in their representative character. The cause was referred at the time of its being called on, and a verdict ultimately entered in favour of the defendant, for a certain sum. The Master taxed the defendant his whole costs on all the counts in the declaration.

An application was then made to review the taxation, on the ground that this was a case in which, pursuant to the late act, the plaintiff would not be liable to costs, as there was reasonable and probable cause for bringing the action by the plaintiffs in their representative character. A rule having been obtained—

Cause was shewn against it. It was contended, that the plaintiffs were liable to pay costs, at all events on those counts wherein they had laid the promises as made to themselves, although, perhaps, under certain circumstances, they might not be liable for the costs of those counts wherein the promises were alleged to have been made to the testator.

The Court was of opinion that the Master was right in taxing the costs to the defendant on the whole declaration. It was only by a special application to the Court that the plaintiffs could be freed from their liability to pay the defendant his costs on all counts. Such application should have been made previous to taxation. It not having been so made, the plaintiff could not be allowed to come in and free himself from the payment of those costs, except on certain terms. Here, however, as it appears that the defendant is willing to forego his claim to the costs of the counts founded on a supposed promise to the testator, the plaintiffs may have the taxation of the Master reviewed as to those costs, on payment of the costs of this application.

Rule accordingly.—*Ashton and another v. Poynter*, H. T. 1835. Excheq.

**WRIT OF EXECUTION.—AMENDMENT OF CA. SA.—PRISONER.—JUDGMENT.**

*Under what circumstances a writ of execution may be amended.*

In this case the plaintiff had recovered a

verdict against the defendant, and signed judgment for 88*l*. He afterwards issued a *ca. sa.* against the defendant, and in the writ the amount of the plaintiff's recovery was stated to be 100*l*. On the back of the writ the right sum, 88*l*. for damages and costs, was stated. For this amount the defendant was detained in custody.

An application was subsequently made and a rule *nisi* obtained, to discharge the defendant out of custody, on the ground of a wrong statement in the body of the writ of the amount for which the defendant had signed judgment.

A cross rule was then obtained for amending the writ by the insertion of the proper sum.

Both rules came on together. After cause had been shewn in each,—

The Court was of opinion that the amendment might be allowed.

Rules accordingly.—*Arnett v. Weatherby*, H. T. 1835. Excheq.

**PLEADING.—NEW RULES.—GUARANTEE.—DEMURRER.**

*A plea may be good although it only varies the time within which the payment ought to be made.*

This was an action on a guarantee. The defendant pleaded that the plaintiff had agreed that the goods in question, when supplied, should be paid for by a bill at three months.

To this plea the plaintiff demurred, on the ground that the defendant had, by his plea, only shewn the time within which the contract was to be fulfilled, but did not alter the nature of the contract itself.

In support of the plea, it was contended, that the defendant had pursued the only course which, consistently with the new rules of pleading, was open to him. The plea amounted to an allegation that the credit had not expired, and that fact must under the new rules be pleaded.

The Court having intimated a strong opinion that the demurrer was not tenable, it was withdrawn.

Demurrer withdrawn.—*Taylor v. Hibary*, H. T. 1835. Excheq.

**NOTES OF THE WEEK.**

**HOUSE OF LORDS.**

*Bills for second Reading.*

<i>Title of the Bill.</i>	<i>Proposer.</i>
Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Ecclesiastical Jurisdiction.	Lord Brougham.
Illegal Securities.	

*Passed.*

Oaths Abolition.	Duke of Richmond.
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## HOUSE OF COMMONS.

*Bills to be brought in.*

Law of Tenure.	Sir J. Campbell.
Law of Escheat.	Sir J. Campbell.
Prisoners' Defence.	Mr. Ewart.
County Coroners.	Mr. Cripps. 5 May.
Poor Law Amendment.	Mr. Trevor.
Registration of Births, &c.	Mr. Wilks. 19 May.
Tithes Commutation.	Chanc. of Excheq.

*Second Reading.*

Law of Libel.	Mr. O'Connell.
Bankruptcy Funds.	Master of the Rolls.
Ecclesiastical Courts.	Attorney General.
Clergy Discipline.	Attorney General.
Dissenters' Marriages.	Chancellor of Exch.

29th April.

Infants' Property (Ireland).  
Contempts in Equity (Ireland).

*In Committee.*

Abolishing Imprisonment for Debt, &c.	Sir J. Campbell.
Copyholds Enfranchisement.	Sir J. Campbell.
Highways.	Mr. Lefevre.
Registration of Voters.	Lord J. Russell.

6th May.

*Consideration of Reports.*

Execution of Wills.	Sir J. Campbell.
Law of Executors, &c.	Sir J. Campbell.

## LONDON SMALL DEBTS BILL.

A Bill for the Recovery of Small Debts in the city of London is to be brought in on the 4th of May, by Mr. Alderman Wood.

## IMPRISONMENT FOR DEBT BILL.

We understand the select Committee on this Bill have gone through the clauses, and made various amendments. It will of course be reprinted, and afterwards, as we learn, will be re-committed. The opposition continues to increase against the main principle of the Bill (the abolition of arrest), and against most of the leading details.

## SITTINGS AT THE ROLLS,

*In and after Hilary Term, 1835.*

To Sit at Westminster at Ten o'clock.

Wednesday April 15 | Motions.

Thursday . . . 16 } Petitions in the General Paper.

Wednesday . . . 22 } Pleas, Demurrers, Causes, Further Directions, and Exceptions.

Thursday . . . 23 | Motions.

Friday . . . 24 } Pleas, Demurrers, Saturday . . . 25 } Causes, Further Directions, and Exceptions. Monday . . . 27 } Tuesday . . . 28 } Wednesday . . . 29 }

Thursday . . . 30 | Motions.

Friday . . . May 1 } Pleas, Demurrers, Saturday . . . 2 } Causes, Further Directions, and Exceptions. Monday . . . 4 } Tuesday . . . 5 } Wednesday . . . 6 }

Thursday . . . 7 | Motions.

Friday . . . 8 } Pleas, Demurrers, Saturday . . . 9 } Causes, Further Directions, and Exceptions. Monday . . . 11 } Tuesday . . . 12 }

Wednesday . . . 13 | Motions.

*At the Rolls.*

Thursday . . . 14 } Petitions in the General Paper, and to swear in Solicitors.

Friday . . . 15 | Short Causes.

Causes, Further Directions, and Petitions by Consent, every Friday, at the Sitting of the Court.

## COMMON PLEAS SITTINGS.

*In and after Easter Term, 1835.**In Term.*

MIDDLESEX.	LONDON.
Tuesday . . . May 5	Wednesday . April 29
For undefended causes only.	Wednesday . May 6

*After Term.*

MIDDLESEX.	LONDON.
Thursday . . . May 14	Friday . . . May 15

The Court will sit at ten o'clock in the forenoon on each of the days in term, except Tuesday the 5th May, on which day it will sit at Three o'clock in the afternoon, and at half past Nine precisely on each of the days after Term.

The causes in the list for each of the above Sitting Days in term in London, if not disposed of on those days, will be tried by adjournment on the days following each of such Sitting Days.

## ANSWERS TO QUERIES.

## Common Law.

UNSTAMPED NOTE. P. 336.

The stamp must be impressed before the bill or note is written; 31 G. 3, c. 25, s. 19. The penalty of 50*l.* is imposed on any one who shall make, sign, or issue any bill or note without being duly stamped; 55 G. 3, c. 184, s. 11. I.

## Law of Property and Conveyancing.

AD VALOREM AND DEED STAMP. P. 304.

There is, I believe, no authority as to this point. If there be a settlement of lands and a definite sum of money or stock by one instrument, I submit there must be a deed stamp on the instrument in respect of the lands, and the settlement *ad valorem* stamp in respect of the money. If the instrument be not properly stamped, is not *J. W.* liable to the penalty in the following statute, which has not been repealed—viz. If any attorney, solicitor, clerk, or other person, shall engross any deed *not duly stamped*, and shall neglect to procure the same to be stamped within one calendar month, such person is liable to forfeit 20*l.*—37 G. 3, c. 19. I.

WILL.—POWER. P. 399.

The mother and sister merely take a life estate in the real property, according to the well-known rule of law, that when "an estate is given without words of inheritance, merely a life interest passes." I know that this rule has been softened; that the word "*heirs*" is not always required to pass an estate by devise. The rule was softened when an estate was given generally, *charged with the payment of annuities*, and the devisee took a fee. 5 T. R. 335. A still stronger case was, where the word "*estate*" was used; as when a testator seised in fee devises his *estate* in Dale to *A. B.*, this word was held to denote the *quantity* of interest, and not to be a mere description of land. 1 T. R. 411. On the other hand, it was expressly held in a subsequent case, that the word "*hereditaments*," without words of inheritance, did not pass a fee. 5 T. R. 558. Surely a case where the still more general word "*property*" is used, would be decided by that just cited. J. O.

DEVISE. P. 304.

According to the rule in *Shelley's case*, *S. R.* takes an estate tail, and consequently can bar (or rather, I should say, can convey by 3 & 4 W. 4, c. 74,) all subsequent estates. If *T. R.* dies without issue, *S. R.* would take an estate in fee. I.

## QUERIES.

## Common Law.

BILL.—PRISONER.

Is it necessary, in any case, to file a bill or demand a plea against a prisoner? C.

FIAT.—BANKRUPT'S NAME.

Is a fiat which omits one of the Christian names of a bankrupt, *void at law*? C.

ACTION.—BANKRUPT.

*A.* having brought an action against *B.*, becomes bankrupt, and obtains his certificate. His assignees give him *B.*'s debt to get in for himself. Can *A.* continue the former action against *B.* without any risk? C.

COVENANT.—BUILDINGS.

Is a tenant bound, having erected houses, &c. on the land comprised in his lease, to deliver up such houses in good repair, the covenant in the lease only extending to the buildings erected at its date? A. B.

## THE EDITOR'S LETTER BOX.

We are now informed, from good authority, that the rule against the Sheriff of Northamptonshire, for an alleged overcharge on granting a warrant, was enlarged, at his counsel's instance, till the present Easter Term.

"A Regular Subscriber from the First," is informed, that the General Index to the *Legal Observer*, which has been suggested by him and other Subscribers, if deemed useful by our Readers in general, will be published after the 10th Volume, that is, in November next.

The Queries and Answers of R. H. P.; "A Subscriber;" J. C. G.; and "Lector;" have been received.

We thank T. T. T. for his information.

The Query of "A Constant Reader," we believe, has not yet been answered.

The Paper of "Aspiro," on Imprisonment for Debt, will probably appear next week.

The names of Perpetual Commissioners recently appointed, will be published in the Supplement for the Month.

The Municipal Corporation Report, and the Objections of Sir F. Palgrave, are now published, as an Appendix to this Volume, price 2*s.*

# The Legal Observer.

Vol. IX.

SATURDAY, APRIL 25, 1835.

No. CCLXV.

— "Quod magis ad nos  
Pertinet, et necire malum est, agitamus.

HORAT.

## THE NEW ADMINISTRATION.

It now becomes our duty formally to record the events connected with the recent changes in the administration, so far as they relate to our own profession. We cannot repeat too often, that we have no political bias whatever; and in adverting to public men, our only wish, and our only right is, to consider their merits as lawyers. With any other matter we meddle not.

At the time that we write, Lord Lyndhurst holds the Great Seal; but it is only until his successor or successors are determined on. The law officers of the late administration all go out. As lawyers we cannot but regret this. Lord Lyndhurst almost always gives satisfaction to the suitor. He readily comprehends the points in dispute, separates them from all other matters, and sifts their merits with a real desire to decide on them correctly. Sir William Follett has fully sustained the high expectations which were formed of his success as a parliamentary debater, and as a leader in the courts of common law. Sir Edward Sugden, if reports from all quarters are to be believed, has maintained as high a character as a Judge, as he bore as an Advocate. We sincerely regret that the profession and the public should be deprived of the services of these eminent men.

The current report, and we believe it to be true, is, that the Great Seal is to be put in Commission, which would, of course, be only a temporary measure. In only two instances, we believe, have Commissioners held the Seals for much more than a year. First, in the year 1688, Feb. 28th, when

Sir John Maynard, Anthony Keck, Esq., and William Rawlinson, Esq., were appointed Lords Commissioners, who held the Seals until the 3d of June, 1690; and secondly, in 1690, 3d of June, when Sir John Trevor, Sir William Rawlinson, and Sir George Hutchins, were appointed Lords Commissioners, who held the Seals until the 29th of March, 1693, when Sir John (afterwards Lord) Somers was made Lord Keeper. The last instance in which Lords Commissioners of the Great Seal were appointed, was in the year 1792, when Chief Baron Eyre, Mr. Justice Ashhurst, and Mr. Justice Wilson, were made Commissioners.

Sir John Campbell has been appointed Attorney General, Mr. Rolfe Solicitor General, and Lord Plunkett Chancellor of Ireland.

It has been said, that the great reason for putting the Seals in Commission is to enable the Government, or Lord Brougham, with its sanction, to bring forward a measure for separating the political from the judicial functions of the Lord Chancellor. We have frequently adverted to this plan in our preceding volumes; and when we find that its being again introduced has been determined on, we shall bring under one view the several projects which have been entertained on the subject, and shall enable our readers to judge for themselves as to their merits. At present the whole rests on rumour. We need only say at present, that the appointment of a permanent Chief Judge in Equity, not dependent on political changes, would be an unquestionable benefit, the want of which is forcibly before us at the present moment.

## NEW BILLS IN PARLIAMENT.

## ECCLESIASTICAL JURISDICTIONS.

THIS is a Bill "to consolidate the several Ecclesiastical Jurisdictions in England and Wales, and to enlarge the Powers and Authorities of such consolidated Jurisdictions; and to alter and amend the Law in certain matters Ecclesiastical."

The preamble merely recites, that "it is expedient to consolidate the several ecclesiastical jurisdictions in England and Wales, and to enlarge the powers and authorities of such consolidated jurisdictions."

The following is the substance of the proposed enactments.

1. All peculiars shall be comprised within the archdeaconry, diocese, and province in which they are locally situated.
2. No archdeacon or bishop to exercise any testamentary or contentious jurisdiction.
3. Arches and Prerogative Courts of Canterbury to be united; and Chancery and Prerogative Courts of York to be united.
4. All wills and administration bonds to be transmitted to provincial registries.
5. Judges and registrars of the provincial courts, by whom to be appointed.
6. Salaries of Judges and Registrars.
7. Proviso in favor of the present Registrars of the Prerogative Courts.
8. Salaries when to commence, and how to be paid.
9. Certain officers to be appointed by Judges of Provincial Courts.
10. Fees to form a common fund, out of which salaries shall be paid.
11. "That every person who shall have taken the degree either of Master of Arts or of Bachelor of Laws in either of the Universities of Oxford or Cambridge, shall be qualified to be admitted to practise as an advocate in either of the said provincial courts, in the same manner and under the same conditions and restrictions under which persons have been heretofore admitted to practise as Advocates in the Ecclesiastical Courts who have taken the degree of Doctor of Laws: Provided that every such person applying to be so admitted shall have entered his name upon a proper stamp in the registry of the Provincial Court of Canterbury, as a student and intended candidate for admission as an advocate, one year at the least before he applies to be so admitted an advocate, but either after or before he has taken such degree of Master of Arts or Bachelor of Laws as aforesaid: Provided also, that all advocates who shall have taken the degree of Doctor of Laws in either of the said universities, shall be entitled to precedence and pre-audience over those advocates who shall not have taken such degree of Doctor of Laws."

12. Power to Judges of Provincial Courts to grant issues, to be tried either before themselves or common-law Judges.

13. For trials before a Judge of a Provincial Court, juries shall be impanelled, &c. as at common law.

14. Judges of the Provincial Court may administer oaths, and rules of evidence to be the same as in common law courts.

15. Attendance of witnesses and production of documents, how to be enforced.

16. New trials of issues may be granted.

17. Depositions may in certain cases be received in evidence on the trial of issues.

18. Regulation as to evidence of witnesses being taken by commission.

19. Judge may, on consent, order that one of the parties in the cause shall examine the other.

20. Grounds of appeal specified.

21. 5 & 6 E. 6, c. 4; 27 G. 3, c. 44; 5 & 6 E. 6, c. 4; and 27 G. 3, c. 44, repealed.

22. No Ecclesiastical Court shall take notice of brawling or smiting.

23. Punishment for brawling, &c.

24. Ecclesiastical Courts not to take cognizance of defamation.

25. Punishment for defamation.

26. Ecclesiastical Courts not to punish for incest, adultery, or fornication.

27. Incest a misdemeanor.

28. Sequestrators shall be always appointed by the bishop; appointment to specify amount of rate of remuneration; no creditor or creditor's attorney shall be appointed sequestrator.

29. Sequestrators may make compositions for tithes. Bishop's consent necessary. Composition to be good for twelve months only.

30. Sequestrators may sue for tithes, &c.

31. Enactments with respect to recovery of tithes, &c. not exceeding 10*l.* value, to be available by sequestrators.

32. Bishop shall appoint curate during sequestration. 57 G. 3, c. 99, s. 54. Incumbent may be appointed curate.

33. Bishop may summarily remove any sequestrator or curate.

34. Application of profits sequestered.

35. Sequestrators shall render accounts into the Bishop's registry.

36. Sequestrator's accounts may be impeached in the Provincial Court.

37. No appeal from the Provincial Court.

38. Writs of sequestration to be returned into Bishop's registry.

39. When one writ of sequestration has been issued, no other shall be issued till the other is returned. Record to be kept of the order in which writs shall come to the Bishop's registry.

40. Sequestrations under 57 G. 3, c. 99, to have priority over all other sequestrations.

41. Archbishops to be considered Bishops.

42. Repeals 1 H. 7, c. 4.

43. Charges against spiritual persons heretofore cognizable by the Ecclesiastical Court, shall in future be heard by the bishop of every diocese, except Canterbury and York.

44. Certain Commissioners to be appointed to hear such charges in the diocese of Canterbury.

45. Certain Commissioners to be appointed to hear such charges in the diocese of York.

46. No suit decided by Bishop, &c. to be afterwards instituted in any Courts Ecclesiastical.

47. Bishops or Commissioners to have assessors.

48. Assessors to be advocates of the Perogative Court of Canterbury of five years standing, or barristers of years standing.

49. In what diocese charge may be made.

50. Judgment of Bishop and Commissioner equally valid with that of Court Ecclesiastical.

51. Evidence to be taken *viva voce*, and recorded.

Proviso.

52. Evidence to be given upon oath.

53. Proceedings to be commenced within three years, unless grounded on a verdict of a Jury, or a judgment of an Ecclesiastical Court, and then within three months of such verdict or judgment.

54. Charges against spiritual persons to be in the first instance made by information before a justice of the peace or a surrogate.

55. The information shall be submitted to the Bishop, who shall allow or disallow the intended suit.

56. If suit is disallowed, the promoter may appeal to the Archbishop.

57. These provisions applicable alone to voluntary promoter.

58. As soon as any suit shall be allowed, a citation to defendant shall issue.

What shall be contained in every such citation.

59. Mode of service of citation.

60. Citation shall be returned into the Registry, with an affidavit of service indorsed.

61. Proctor or agent of promoter shall be appointed under hand and seal; and all orders, &c. shall bind promoter, though not present.

62. Articles to be exhibited on return of citation.

63. Defendant may appear personally or by proctor appointed under hand and seal; and orders, &c. shall be as binding on him if he appear by proctor, as if he were present in person.

64. As soon as defendant appears, he shall have an examined copy of the articles.

65. Defendant to deliver an issue within 14 days.

If a negative issue is given, he shall at the same time declare whether he intends to give a defensive allegation; and if he does so intend, he shall give in such allegation within two days.

A copy to the promoter within 14 days.

66. On delivery of allegation into Registry, Bishop, &c. to appoint a day for hearing same.

67. List of witnesses to be delivered into Registry, and summonses to issue.

68. Service of summonses.

69. Witnesses disobeying summons, or refusing to be examined, to incur penalty.

Proviso for tender of expenses, &c.

Bishop, &c. may dispense with attendance of witnesses in certain cases.

70. If defendant neglects to appear on the return of the citation, he may be assigned to appear absolutely, and in default the suit may be heard and determined in his absence.

71. Further time to either party, in any stage, may be allowed by Bishop, &c.

72. Judgments and sentences to be in writing, and signed.

73. Either party may appeal from sentence, &c. to the Archbishop.

74. Appeals to be heard by Archbishop, with the assistance of one or both of the provincial Judges.

75. No evidence to be given before the Archbishop.

76. Archbishop may remit to Bishop, &c. for further inquiry.

77. When notice of appeal is lodged, Archbishop shall inhibit execution of the sentence, &c.

78. Time of appeal, manner of notice, &c.

79. Judgment and sentence shall not be carried into effect for days after it shall have been made.

80. Security for costs to be given by appellant.

81. Judgment of Archbishop and of Bishop, &c. in all cases in which appeal to the Archbishop is not allowed, shall be final; no prohibition.

82. During pendency of appeal from sentence, defendant may be inhibited, and a curate with salary appointed. 57 G. 3. c. 99.

83. Costs how to be paid and taxed.

84. Documents to be filed; open to inspection; copies to be given.

85. Penalty on registrar for breach of duty.

86. Each Bishop may make rules of practice to be observed in suits under this act, so that such rules be not inconsistent herewith.

87. Nothing herein shall diminish the power of Bishops, except under 1 H. 7. c. 4.

88. No spiritual person shall hereafter become possessed of a donative church, chapel, or benefice, except by presentation, institution, and induction.

89. Persons entitled heretofore to grant by donation, shall be entitled to present.

Donatives to be liable to lapse.

90. Every donative shall be subject to ordinary jurisdiction.

91. Donatives shall be subject to ordinary visitation.

92. The King shall not hereafter make any Church or Chapel a donative.

93. Churchwardens shall be chosen in Easter Week.

In case of death, insolvency, bankruptcy, or removal of a churchwarden, a successor shall be appointed within a month.

94. If a churchwarden is not chosen at or within proper time, application may be made to quarter sessions of the county to appoint.

95. Provision for counties corporate, liberties, &c.

96. Quarter sessions to have the power of deciding upon the validity of the election of churchwardens.

97. Churchwardens appointed by quarter sessions, to be as legal churchwardens as if chosen without application to the court.

98. Quarter sessions may send a case for the opinion of the King's Bench.

99. Churchwardens *de facto* shall act.

100. Churchwardens shall account, &c. as overseers of the poor.

101. No spiritual censures shall be passed on account of dilapidations or waste.

102. Provincial Court may compel repairs of dilapidations and waste.

103. Upon suit of what persons the Provincial Courts may compel repair of dilapidation and waste.

104. Force of orders of court under this act.

105. Archbishops to be deemed Bishops in their dioceses.

106. Nothing herein shall prevent actions being brought for dilapidations and waste.

107. Perpetual curates liable to dilapidations and waste.

108. Allotments in lieu of tithes to be deemed glebe.

109. Mines may be opened and worked with leave of Provincial Courts.

Notice of intention to apply to court must be given to patron.

110. Laws, &c. not inconsistent herewith to stand.

111. Nothing herein shall prevent cutting of timber, &c. for causes heretofore lawful.

112. A commission shall be issued in every diocese, to inquire into existing claims to the use of particular pews.

113. Commissioners shall make a circuit of the diocese, and give notice.

114. Commissioners shall in open court determine claims.

115. Commissioners shall examine upon oath, &c.

116. Commissioners shall certify into the registry of the diocese the particulars of claims allowed; certificates to be filed, and to be evidence either in the original or by copies.

117. Decision of Commissioners, or a majority, to be final.

Provision for equal division of opinion.

118. Bishop may appoint Rural Deans instead of Archdeacons; Archdeacons and Rural Deans may act out of their official jurisdictions.

119. Commissioners not to determine by death. Vacancies by deaths to be filled up.

120. Commissioners shall all sit together.

121. Pews in general to be by the order and disposition of the churchwardens.

122. When necessary for repairs, &c. faculty pews may be removed, and others appropriated in their stead.

123. After no faculties to be granted. No title by prescription to be available.

124. Faculty pews to be repaired by owners, who shall not be discharged from repair of other pews.

125. Provisions herein shall apply to pews

in aisles and chancels, &c. and to part of pews as well as whole pews.

126. Penalties for breach of duties.

127. Archbishops to be considered Bishops.

128. 22 and 23 C. 2. c. 10, directing administration bonds to be taken.

Inconvenience of provisions of 22 and 23 C. 2. c. 10.

Judge of Court granting administration may direct that different sureties shall be taken for different portions of the amount secured.

129. Judge shall not be obliged to take security for any part of the assets to which the administrator, &c. may be entitled.

130. Judge may declare bond forfeited, and enforce performance of the condition in the bond.

## NOTICES OF NEW BOOKS.

*A General View of the Proceedings in the Courts of King's Bench, Common Pleas, and Exchequer of Pleas, in Personal Actions and Ejectment.* By Edward B. Hooke, Gent. Saunders & Benning.

Amongst the practical publications designed to assist the profession in the recent changes in the law, we notice a Chart compiled by Mr. E. B. Hooke, a Solicitor, shewing at one view, in a tabular form, the various proceedings on the part of the plaintiff and the defendant in an action at law. The several classes of proceeding for the respective parties are marked by different colours, which enable the practitioner more readily to trace the respective steps, from the first process to the final execution. By looking at this map, the legal traveller in the new and unfrequented paths of practice, will be enabled readily to direct his course from stage to stage, looking for further information to the more scientific and elaborate road books of Messrs. Tidd and Chitty.

We think Mr. Hooke has carefully and ingeniously executed his design, and that this Chart may be usefully placed up in the chambers of special pleaders and attorneys. To the articulated clerk in particular, it will be more especially serviceable.

## JURISDICTION IN EQUITY FOR ALIMONY.

Sir,

In your 8th volume, p. 312, some remarks of mine will be found on the nature of alimony, as to whether it could be considered in the light of separate maintenance of the wife; and the result of such inquiry was, that I came to the conclusion, that alimony was in fact no more than a condition on the husband to pay for necessities for his wife, to the extent of the alimony decreed; and that if on her death there remained any arrears, these would belong to the husband, and not be considered as her separate estate. In the course of last year, a bill was filed by the representatives of a wife who had had alimony decreed to her, but which was in arrear at the time of her death. To this bill the husband demurred, on the grounds I have before stated; and in June, 1834, the Vice-Chancellor gave the following judgment:—"Having taken the opinions of some eminent civilians on the present state of the law, though not satisfactory, yet they rather inclined him to think the Ecclesiastical Court had power to enforce its decree. In such case the bill there (in Chancery) was unnecessary; the present bill being filed on the supposition that in the Ecclesiastical Court bail could not be taken to secure payment, and that unless a Court of Equity interfered by *ne exeat regno*, the husband might avoid payment. Being in a state of doubt as to the remedy in the Ecclesiastical Court, he would not go the length of then dismissing the bill, but would overrule the demurrer, reserving costs until ascertained whether the Ecclesiastical Court had jurisdiction."—"From this opinion an appeal was lodged, and the *Lord Chancellor* (Lord Lyndhurst) gave the following judgment:—

"The question was, whether the representatives of a wife, to whom alimony had been decreed in the Ecclesiastical Court, could file a bill in this Court to recover the arrears of that alimony, which had been suffered to run in arrear? His Lordship said, the point was a new one, as this was, he believed, the first instance in which a bill had been filed for such a purpose. It was the peculiar province of the Ecclesiastical Courts to decree alimony, and to enforce the payment; and there was no instance of that Court intermeddling with the jurisdiction of the Ecclesiastical Courts in such matters since the times of the Republic, when the Commissioners who were entrusted with the exercise of the jurisdiction of the Court of Chancery, heard and decided ecclesiastical causes, there being at that period no Ecclesiastical Court to which the suitors had the means of resorting. No instance of any such interference with the Ecclesiastical Courts could be produced since that period. It was said, however, that as the Court of Chancery would grant the writ of *ne exeat regno* to restrain a person from quitting the kingdom to avoid the payment of alimony, the Court was by analogy bound to lend its assistance to

recover arrears of alimony. Lord Eldon, however, on granting such a writ, was reported to have said, that he yielded more to precedent than to principle on the occasion, and that it certainly was not a practice he should lend himself to extend. With such a declaration from so high an authority on the subject of granting the writ *ne exeat regno*, his Lordship did not think he should now be justified in allowing any deductions to be drawn from it favourable to the interference of this Court with the Ecclesiastical Courts, or to extend a practice which to Lord Eldon appeared doubtful as to principle. But then it was said, that if the Court refused to interfere, no arrears of alimony could be recovered at all, inasmuch as the Ecclesiastical Court permitted no proceedings to be taken by executors for the recovery of the alimony. That, in his Lordship's opinion, formed an additional reason why the Court of Chancery should not interfere. If the Ecclesiastical Court permitted no proceeding to be taken by executors for alimony, it followed that the Ecclesiastical Court held as a principle, that alimony, if suffered to fall in arrear, should not be recovered. Looking, therefore, at the question of principle in this case, and satisfied by the inquiries he had caused to be made with respect to the practice of the Ecclesiastical Courts, his Lordship was clearly of opinion, that a bill for the recovery of arrears of alimony could not be maintained. His Lordship, therefore, this being an appeal from the Vice-Chancellor, overruled his Honour's order, and allowed the demurrer.—*Stones v. Cook*.—Lincoln's Inn, 1st April, 1835.

Having formerly gone so fully into this matter, I need only refer to what I have before said; and add, that the above judgment of the Lord Chancellor fully proves the position I contended for. M.

## PRactical POINTS OF GENERAL INTEREST.

No. LXXVII.

### A TICKETING SHOP.

The circumstances adjudicated upon in the following case appear to us to be new.

Assault and false imprisonment. Pleas, first, general issue; second, that the defendant was possessed of a dwelling house, and that the plaintiff was there making a great noise, disturbance, and affray, in the breach of the peace of our Lord the King; that the defendant requested him to depart, but that he refused, and continued the making of the noise, disturbance, and affray; whereupon, to preserve the peace, the defendant gave charge of the plaintiff to a certain policeman. Replication—*De injurid*.

It appeared that the plaintiff was an upholsterer in Aldgate, and the defendant a linen-draper in Bishopsgate-street Without, who had in his shop window a number of articles of



linen-drapery, with prices marked upon tickets affixed to them. It further appeared from the evidence of the plaintiff's clerk, Charles Ellis, that at about five o'clock in the afternoon of the 27th of December, the plaintiff and his clerk saw a dress in defendant's shop window, marked 5s. 11d., which the plaintiff asked his clerk to buy; the clerk went into the defendant's shop and asked for it, and gave the defendant's shopman a sovereign, desiring him to take 5s. 11d. out of it. He said, the dress was 7s. 6d. The clerk asked how it came to be marked 5s. 11d.; and the shopman said he could not help that. The plaintiff then came in, and said it was an imposition. One of the shopmen said, "I suppose we must let him have it;" and another said, "Don't let him have it; he is only a Jew; turn him out." The shopmen then turned the plaintiff out of the shop; a policeman was sent for, who took the plaintiff into custody, and he was taken to the station-house by the direction of the defendant. Another witness, named Christie, stated that he was present, and heard the defendant's shopman desire the plaintiff to leave the shop; he said, he would not without the dress. A person said, that the plaintiff had no money, and upon this he produced some gold. Several persons then struck the plaintiff; and the witness, being frightened, ran up stairs, and met the defendant coming down (he not having been present before), and desired him to assist the plaintiff.

*Thesiger*, for the plaintiff.—If a man advertises his goods at a certain price, I have a right to go into his shop and demand the article at the price marked.

*Purke*, B.—No; if you do, he has a right to turn you out. The plaintiff was a trespasser in continuing in the house. He had no right to continue there against the will of the owner or his agent. I think that the plea is bad in not stating that the policeman saw the affray; and I think the better way will be, to enter a verdict for the defendant, with leave for the plaintiff to move to enter a verdict for him for such damages as the Jury shall think him entitled to. And (in summing up)—The defendant is not answerable for the misconduct of his shopmen towards the plaintiff, as it occurred during his absence from the shop. If a person does not assist in a trespass, either in word or deed, he is not liable for it.

Verdict for the plaintiff on the general issue; and verdict for the defendant on the justification, with leave to move to enter a verdict for the plaintiff, with 15*l.* damages.

In the ensuing term, *Thesiger* moved to enter a verdict for the plaintiff, in pursuance of the leave given; and the Court granted a rule to shew cause.—*Timothy v. Simpson*, 6 C. & P. 499.

## SUGGESTIONS FOR IMPROVING THE LAW.

No. V.

To the Editor of the *Legal Observer*.

FINE AND RECOVERY ACT.

Sir,

Not having observed in your columns any notice of a serious defect in the Fine and Recovery Act, I wish to draw the attention of the profession to the subject; and as I cannot do so more forcibly than by putting an actual case within my own knowledge, I shall be obliged by your insertion of the following statement, and if I am correct in the view I have taken of the subject, your readers will, I think, agree with me that it calls for the interference of some of our legal representatives in Parliament; and I beg to suggest that a very short and simple enactment might be framed to provide a remedy.

By a settlement, lands were limited to *A. B.* and *C. D.* their heirs and assigns, to the use and intent that *E. F.* and *G. H.* might, during the life of *Ann Brown*, take a rent-charge thereon (upon trusts after declared) with usual powers of distress and entry, &c. and subject thereto, to the use of said *E. F.* and *G. H.*, their executors, &c. for ninety-nine years, for further securing said rent-charge remainder. To the use of *John Smith*, for life remainder. To said *A. B.* and *C. D.* to preserve contingent remainders. Remainder to the use of all and every the child and children of said *John Smith*, then born or thereafter to be born, who should be living at the decease of said *John Smith*, and their respective heirs and assigns for ever, to be equally divided between them as tenants in common, and if but one such child, then to such one child, his or her heirs and assigns for ever; and in case of no such child, then to the use of *X. Y.*, his heirs and assigns for ever. *John Smith*, (the tenant for life) has six children living, and being of an advanced age is not likely to have more.

Previous to the act of 3 & 4 W. 4, c. 74, a series of decisions\* (confirming the previous opinions of Mr. Fearn and Sir B. Sugden, but in opposition to the doctrines maintained by Mr. Preston in his works), had established, that mere contingent remainder men might levy a fine *sur consuance*, &c. in fee, without danger; and in *Doe d. Christmas v. Oliver*, the Court of K. B. held further, that such a fine was not only an estoppel in the first instance, but that, when the contingency happened, it operated upon the estate, and gave to the party in whose favour the fine was limited, exactly what he would have had, had the contingency happened before the fine was levied. Consequently, before the act alluded to, *John Smith* and his children, by joining in a conveyance, and the children levying a fine, could make a title to a willing purchaser (satisfied to take

\* *Davies v. Bush*, 11 C. & P. 58. *Doe d. Brune v. Martin*, 1 B. and Cres. 497. *Doe d. Christmas v. Oliver*, 10 B. and Cres. 181.

the slight risk of John Smith having any other children, and accepting an indemnity against the rent-charge;) but as the act has abolished the assurance by fine, and has not substituted an assurance in lieu of it, (except in particular instances) there is now no mode of making a title to a purchaser under the above circumstances. This is a great hardship upon the parties represented, as John Smith and his children, who have opportunities from time to time, of selling small parcels of land upon very advantageous terms: and in fact, before the passing of the above-mentioned act, they, in several instances, made sales and conveyed to the purchasers, as before-stated, under the authority of the cases cited. M. M.

### ON A WIFE'S TAKING HER HUSBAND'S SURNAME.

We need not go quite so far back as the Flood, to find out that persons were originally content to use one name only, viz. that which is denominated at the present day the Christian name, such as John, Paul, &c.: by way, however, of identifying a person, a description was added, as Paul an Apostle, &c. Joseph of Arimathea; or a party was described as being the son of a particular party, or as belonging to a particular tribe. It does not require much stretch of imagination to suppose, if a description was requisite for the identity of a party, that such description would soon assume the form of a surname, or be added, by way of pointing out what portion of a tribe a person belonged to, or which of a set of persons was meant, as there might be hundreds of the same name in a tribe. To distinguish one another, therefore, it may easily be supposed that parties would attach an individual name, either arising from a peculiarity of person, as John Strong-in-the-Arm, Thomas Rufus, Richard Cœur de Lion, &c. It only requires a single step further in the imagination, to suppose that the descendants of these parties assuming these names, might choose to retain such special marks.

No restraint appears at any time (save as I shall hereafter mention) to have been put upon parties from using such names as they may think proper to use; and that caprice of the parties was generally the rule in such cases, appears from the following extract from Camden's Remains concerning Britain, ed. 1697, p. 141:—"But for variety and alteration of names in one familie upon divers respects, I will give you one *Cheshire* example for all, out of an ancient roll belonging to Sir William Brerton of Beerton, Knight, which I saw twenty years since. Not long after the conquest William Belward, lord of the moietie of Malpasse, had two sons, Dan David of Malpasse, surnamed *Le Clarke*, and Richard; Dan David had William his eldest son surnamed *De Malpasse*; his second son was Philip Gogh, one of the issue of whose eldest sons took the name of Egerton; a third son

took the name of David Golborne, and one of his sons the name of Goodman. Richard, the other son of the aforesaid William Belward, had three sons, who took also divers names, viz. Thomas de Colgrave, William de Overton, and Richard Little, who had two sons, the one named Kenclarke, and the other John Richardson. Herein you may note alteration of names in respect of habitation, in Egerton, Colgrave, Overton; in respect of colour, in Gogh, that is, red; in respect of quality, in him that was called Goodman; in respect of stature, in Richard Little; in respect of learning, in Kenclarke; in respect of the father's Christian name, in Richardson; all descending from William Belward. And verily the gentlemen of those so different names in *Cheshire* would not be easily induced to believe they were descended from one house, if it were not warranted by so ancient a proof."

We may next refer to the opinion of Sir Joseph Jekyl, in 3 P. W. 65. "Surnames are not of great antiquity; for in ancient times the appellations of persons were by their Christian names, and the places of their habitation; as Thomas of Dale, viz. the place where he lived. I am satisfied the usage of passing acts of parliament for the taking upon one a surname, is but modern; and that any one may take upon him what surname, and as many surnames as he pleases, without an act of parliament." The following is Lord Eldon's opinion, 15 Ves. 100. "An act of parliament giving a new name, does not take away the former name; a legacy given by that name, might be taken. In most of the acts of parliament for this purpose, there is a special proviso to prevent the loss of the former name. The King's licence is nothing more than permission to take the name; and does not give it. A name therefore taken in that way, is by voluntary assumption." Lord Tenterden's opinion is as follows:—"A name assumed by the voluntary act of a young man at his outset into life, adopted by all who know him, and by which he is constantly called, becomes, for all purposes that occur to my mind, as much and effectually his name as if he had obtained an act of parliament to confer it upon him." I have here purposely omitted those cases where a testator expressly requires a name to be taken by act of parliament, or other specified mode, as being beside the present subject. Sufficient, I think, has been shewn to prove that in ordinary cases any person may assume whatever name he may think proper.

This, however, only brings us thus far, viz. that a wife may assume her husband's name; but nothing more than custom calls upon her to disuse her maiden name. That the ceremony of marriage does not in itself change her name, will be obvious to all those who have been a witness to the marriage ceremony, as upon the conclusion of the prayers at the altar all the parties adjourn to the vestry, where the husband and wife respectively sign their names, the wife signing her maiden name, and should she happen to sign her husband's name, she is told that will not do, and

a re-signature is required in her maiden name. I am not prepared to shew that the signing the husband's would be absolutely null and void, but I state the above as matter of fact, collected from various clergymen; and the best reason that can be given may possibly be, that the register professes to contain a minute or evidence that two parties professing to call themselves John Thomas and Esther Stanhope came and were married in the presence of the parties who there place their names, by the minister who there also signs his name. That such entry in the register is an act taking place after the marriage, appears from sec. 28. of the Marriage Act, which enacts, "that all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration an entry thereof shall be made in the register book provided, and kept for that purpose, as by law is now directed, or as shall hereafter be directed; in which entry or register it shall be expressed that the said marriage was celebrated by banns or licence, &c. and such entry shall be signed by the minister, and also by the parties married, and attested by two such witnesses, &c." The wording of this clause contemplates the entry as a mere evidence of a preceding act; and in the absence of such entry the marriage might be proved *aliunde*, as appears from the opinion of Lord Mansfield, 1 Bl. Rep. 367, in a case where the signatures of the clergyman, the parties, and the witnesses, were wanting to the entry. "In a suit in the Ecclesiastical Court for jactation of marriage, perhaps it may be necessary to prove that all the solemnities of the Marriage Act have been punctually complied with. But God forbid that in other cases (the legitimacy of children, and the like) the usual presumptive proofs of marriage should be taken away by the statute. It was canvassed in Parliament, at the time when the act was made, and universally agreed, by all whose opinions were worth having, that it would not become necessary to prove the publication of banns, &c. Besides, here the publication of banns is actually proved, both by the entry in the register and the parol evidence of Brown." Lord Mansfield's judgment, in Doug. 174, may also be referred to, for shewing that registers are established for the easier proof of a fact, viz. a marriage, which in the absence of such registers might be proved *aliunde*. The signing therefore of such register, is an act after marriage.

If, therefore, the act of marriage does not take away the wife's maiden name, and give her a new one, what does so change her name, if change does take place involuntarily? In the absence of any authority (save what I shall hereafter mention) to the contrary, I shall venture to assert, that if a woman continued to use her maiden name after marriage, and requested her friends to call her by such name, and she persisted in so doing, during her husband's life-time, it would be a misnomer if she was sued in her husband's name, if she shewed she never had used it. The following,

however, is the only portion I can find in opposition to this position, and I shall, therefore, give the passage in full. "A doubt hath been made, by which name the wife shall subscribe the register, whether by the name which she had before marriage, or by the newly acquired name of her husband. In Scotland, the wife retains the name which she had before marriage; but in England the case is otherwise, for by the marriage she loses her former name, and legally receives that of her husband, as appears from a pretty strong case, *Bon v. Smith*, M. 38 Eliz. A man had issue a son and a daughter, and devised his land to his son in tail; and if he died without issue, that it should remain to the next of his name, and died. The son died without issue, the daughter being then married; the question was, whether she should have this land. And it was held by the Court that she should not: for she had lost her name by her marriage; but it should go to the next heir male of the name. But if she had not been married at the time of her brother's death, she should have had it, for she was the next of the name." Cro. Eliz. 532. This is from the 2 vol. of Burn's Ebeck Law, p. 483. Ed. 1809. The case of *Bon v. Smith*, is here given almost word for word from the report, but no reason is given in such report. Without, however, quarrelling with the decision, I will venture to say, that the Court never meant to lay down, that the ceremony of marriage being performed over a woman, *ipso facto* deprived her of her maiden name. If such was the decision, there is no valid register of the marriages of parties at the present day, as the act requires the parties to sign the register. If, therefore, she signs by her maiden name, she signs a name which is not her own; and therefore the register is incomplete, as wanting the signatures of the parties. As Dr. Burn's doubt never seems to have created a difference in the signature in the register, let us enquire how far the case he cites bears him out in position. We have already shewn that a person may assume a name; and therefore, as custom attaches a greater degree of respect to a woman under the name of wife than of concubine, the taking the name of the husband implies a marriage, or is at least *prima facie* evidence of such act having taken place. When, however, she has assumed this name, whether from the call of custom or what else may induce her so to do, it would be committing a fraud upon the public, if she, after using her husband's name during his life, and continuing so to do after his decease, was to plead a misnomer to an action suing her by her husband's name; or if she were again to be married, under her maiden name, never having disused her first husband's name. This latter fraud is what the marriage acts have strived to prevent, and may be best illustrated by the case of *Rex v. Billingshurst*, 3 M. and S. 250. There a party who had been baptized by the name of Abraham Langley, was subsequently married by the name of George Smith, having been known by that name only for the three years he had resided in the parish. It was at-

tempted to be shown that his marriage was void; but the Court of King's Bench held otherwise, observing, "The object of the statute in the publication of banns was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained than by a publication in the name by which the party is known? If the publication here had been in the name of Abraham Langley, it would not of itself have drawn any attention to the party, because he was unknown by that name; and its being coupled with the name of the woman, who probably was known, would perhaps have led those who knew her, and knew she was about to be married to a person of another name, to suppose either that these were not the parties, or that there was some mistake. Therefore the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name in this case would not have been the true name within the meaning of the statute." And see also *Rea v. Tibbels*, 1 B. and Ad. 190. The recent case of *Allen v. Wood*, Bing. N. C. 8. may be referred to, in which a woman was married in her maiden name; having, to the time of the marriage, used the name of her first husband; and in such case the marriage was held void. These cases go to establish the principle that a party cannot use or disuse names at pleasure, if thereby a fraud be committed. Without resorting, however, to fraud, the case of *Bon v. Smith*, may be disposed of; as in cases such as that, it is open to show the intention of the testator, that no daughter marrying, and thereby by custom taking the name of her husband, was to take, or could take, so as to satisfy the intention of the testator. In 15 Ves. 103; Mr. Justice Lawrence remarks: "If the meaning of a will be ascertained, no reasoning from supposed cases can induce the Court to put a different construction upon the will, but can only lead to a conclusion, that the testator did not see all the consequences of the disposition he may have made; yet in endeavouring to ascertain the meaning of a testator, the absurdities, improbabilities, and inconsistencies which may arise out of cases, falling within one construction or another, have constantly been attended to, with a view of ascertaining such meaning."

If, therefore, we be allowed to consider that the testator knew it to be the habit or custom of women on marriage to assume their husbands' names, it is not too much to suppose that the intention in *Bon v. Smith* was, that the testator meant to exclude a daughter who took another name, and who thereby failed to fill the description given of "the next of his name." Even supposing that the daughter had retained her name, this inconsistency might have attended it; that her children would, in the ordinary course, take upon them the name of their father; and it was more than probable, that in this case the testator meant that the person who was to take under his name was to be such a one as would transmit the name to his posterity, in the ordinary course of events;

and in confirmation of such intention, he has given the estate, in the first instance, to his son and his issue, as the most likely way to transmit the name in the ordinary course. To deny that such might not have been the testator's intention would be to deny to any testator, in framing any particular clause, the right of considering how such clause would operate consistently with his own view of events, and to show that the courts would consider such a limitation to the son, an indication of the testator's intention to prefer a transmission of the name in the ordinary course. The reasoning of Mr. Justice Lawrence, in 15 Ves. 103, may be referred to, and the case of *Leigh v. Leigh*, itself, in 15 Ves. 92. Dr. Burn's tripping point seems to have been in considering that the marriage *ipso facto* changed the lady's name. The Court does not appear to have decided so, as it was only called upon to decide whether at the time the claim was made there was any one, or rather whether the claimant then answered the description in the will; and it was held that she did not, having married and assumed her husband's name. It was on this latter ground, I presume, the Court came to the decision. How long it may take to gain a name by reputation, so as to abolish the old one, depends upon circumstances. We have already shewn one instance in which *three years* was held sufficient to have abolished a man's name by baptism. So where a person had gone by an assumed name for *thirteen weeks*, in order more effectually to conceal himself, having deserted from the army; and then was married by his assumed name, by license; the marriage was holden good, no fraud being intended in respect of the marriage. *Rea v. Burton on Trent*, 3 M. and S. 537. As we have thus got so low in the scale of time, it would hardly be saying too much in remarking, that in the absence of fraud, time seems to have little to do in the matter. It is any thing but a fraud, a woman taking her husband's name, but on the contrary, a wish on her part to follow an old established custom. A few days, or even hours, may suffice to inform her friends that she has taken a new name; and even in the absence of this communication, the being addressed by the new name and not denying it, would amount to an abandonment of her maiden name. Dr. Burn seems to admit that independently of this case of *Bon v. Smith*, the practice of the Scotch and English is the same. In Scotland the practice of calling wives by their maiden names is very rare, and I will venture to say a person might stay there six months and not meet with a case of the kind. We may therefore, I think, presume, that they, like their southern neighbours, have adopted a different custom to what formerly existed, and which I conceive existed in England equally as in Scotland.\* The contract of

\* The portions of Scotland alluded to, are Lanarkshire, Edinburghshire, Peebleshire, Argyleshire, &c. I am told, however, that in Dumfriesshire and that neighbourhood the custom is still very prevalent.

marriage in Scotland has retained more of the civil contract than our marriages in England; and it may not be too much perhaps to assert, that the custom in England changed at the time when the marriage laws of this country assumed a decided difference from those of Scotland. Until, however, I am shewn an authority contradicting the present usage of signing the maiden name in the register *after* the ceremony of marriage, I must humbly submit, that it is only an assumption of the name on the part of the wife in pursuance of an established custom, but that she is not obliged to abandon her own maiden name.

M.

## SELECTIONS FROM CORRESPONDENCE.

### No. XCVII.

#### DISTRIBUTION OF AN INTESTATE'S ESTATE.

Sir,

In the Legal Observer for March 21, your correspondent "J." in his table for the distribution of an intestate's effects, gives the following apparently contradictory rules. Under the title "Grandfather," he says, "But though there be issue of brothers or sisters, yet if they do not claim by representation, but in their own right, the grandfather shall be preferred, he being nearer in degree." In the latter part of the succeeding title, he lays down the following law: "the nephews or nieces or children of brothers or sisters shall exclude their grandfather, when claiming in their own right, as before observed." If this discrepancy be a mere clerical error, perhaps your correspondent (to whom, in other respects, we feel indebted for his useful and concise information) will point out what in reality is the law on the subject.

G. G.

#### MASTER AND SERVANT.

It is the custom, in the neighbourhood in which I reside, to engage servants in the factories at so much per week, and fourteen days' notice on either side is required before leaving the employ.

A servant lately summoned his master for a fortnight's wages before the magistrates; there was no dispute as to the time, or that the servant had misconducted himself; but the master, in answer to the complaint, produced the following notice, which was copied from a board nailed against a wall in the yard of the factory, and in a situation where every one could see it. A similar notice was also placed over the counting-house. "A. B. and C. D. hereby give notice, that they give and require fourteen days' notice, or forfeit fourteen days' wages, to and from all hands leaving their employ."

"N. B.—Notice given and taken at the pay table"

The servant pleaded ignorance of this notice. The master then produced a witness to prove that the servant had a knowledge of it, and the magistrate was satisfied, from what the witness stated, that that was the case; and as the master insisted upon the agreement being enforced, viz. the forfeiture of fourteen days' wages, dismissed the complaint. It also appeared in evidence, that the custom was to receive the notice on a Friday night at the pay table. The master having been informed that it was his (the servant's) intention to leave without giving notice, refused to pay the servant his wages when he applied for them on the Friday night, telling him that as their rules were as before stated, he would not pay the wages. The servant had got another situation, but obtained permission from his master to go back to his former one, and give the notice required, and on the Saturday applied to work his time out; but he, the first master, said, "No, you have left my service without having given me notice, and therefore I claim your fourteen days' wages."

I will thank some of your correspondents to inform me, whether the notice so placed against the wall was sufficient, and the magistrates took a correct view of the case or not, by dismissing it. If they did not, what would be the best means of recovering the wages, whether by action, or a fresh summons before some other magistrates; for, unfortunately, the act gives no power to the servant to appeal, but the master had a power provided the decision had been against him. It was contended, that as the notice did not say, that "No servant shall leave without first giving notice," the servant could at any time come and serve the time out, although the custom of the country is to the contrary. The master says, that as the servant did not come on the Saturday morning, he had filled the situation up by another hand, and therefore he would be placed in an unpleasant situation, if the servant had been allowed to come back. Under these circumstances the magistrates, although they thought it a hard case towards the servant, felt bound to give the decision in favour of the master.

A SUBSCRIBER.

Ashton-under-Lyne.

#### IRREGULAR PRACTITIONERS.—PROFESSIONAL PUFFING.

Sir,

I fully agree with your correspondent, W. L. D. in his animadversions on the disreputable practice of placarding adopted by a certain class of professional men, and I beg leave to send you another amusing specimen of puffing, which has lately been circulated in this neighbourhood, in the form of a hand bill, and also in a provincial newspaper.

Montgomeryshire.

VERAX.

To the Gentlemen of ——— and its  
Neighbourhood.

PROFESSIONAL engagements, and an anxiety  
not to give offence to any by omitting to call

upon them, induce me to adopt this course of returning my most sincere thanks to those of you who have felt so personally interested in my welfare, as to solicit me to come to reside amongst you. I am happy to inform you, that I have this day had my articles assigned, for the very short time I have to serve, to a Mr. ———, who will practise as an attorney and solicitor at ———. I need not (I think) say to such of you who know my habits of business, that nothing in zeal, perseverance, and industry, shall be wanting on my part to conduct all professional practice that may be committed to the care of the office with which I am connected. There being an express stipulation, that all transactions, with the papers relating thereto, which are in the office on my being admitted, will then be handed over to me for my benefit, the same will have my attention from their commencement till their conclusion. To those of you who have not known me from my first being connected with the profession, but have kindly confided in me from recent transactions, I cannot feel too grateful; but I trust, that thirteen years' entire devotion to the practice of the law in all its departments, (particularly Conveyancing and Chancery practice) will enable me not only to retain your confidence, but to obtain the confidence of all whom you may kindly solicit in my behalf. As Mr. ———, may be known to most of you, I consider myself bound to say, that dispatch of business, and promptness in settling accounts, will be strictly attended to.

To secure the interest of all in the best possible manner, a clerk long connected with one of the best Land Agency Offices in the principality, has been engaged.

"I have the honor to be, &c."

#### FELONY WHICH CANNOT BE PUNISHED.

To the Editor of the Legal Observer.

Sir,

On the subject of "A Felony which cannot be punished," allow me to remind you of the case of *John Minter Hart*, an attorney, who was tried for stealing bills of exchange from Sir Jacob Astley, where the judges determined in favor of the prisoner. A man named, I think, *Palmer*, had been previously tried at Clerkenwell before the magistrates, found guilty, and sentenced to transportation for seven years, but was released after the acquittal of Hart.

T. T. T.

### SUPERIOR COURTS.

#### Rolls Court.

##### CHARITY.—INFORMATION.—RELATOR.

*It has been the uniform practice to dispense with a relator in informations filed by the Attorney General under the Charity Commissioners acts: Held, that such practice is*

*right, even where an information was filed after the acts expired, under a certificate of Commissioners dated before they expired. Semble, that in ordinary Charity informations, independent of the Charity Commissioners act, a relator is not necessary, sed quære.*

*Semble also, that if a relator be named, it is not necessary that he should have an interest in the charity; but to a petitioner under the 58 G. 3, c. 101, (Romilly's act) such interest is requisite.*

This was an information filed by his Majesty's attorney general, upon the certificate of the Charity Commissioners, to set aside an improvident lease of charity lands.

Mr Pemberton and Mr Hull moved that the information be taken off the file for irregularity, and that all proceedings be stayed until a proper person be appointed relator. This was a case of extreme importance, for it would decide whether an information filed by the King's attorney general under the certificate of the Charity Commissioners, without a relator, was a valid information. There were two grounds on which the motion was supported. The first was supposing the commission, under the certificate of which the attorney general filed the information, to be still existing, had that learned officer the power, under the different acts of parliament, to file an information, without a relator? The second was that, as the authority of the commissioners under the acts of parliament ceased prior to the filing of the information, the attorney general could not have any authority under those acts, but must proceed with a relator according to the pre-existing practice. The first act (the 58 Geo. 3, c. 91,) which appointed a commission to investigate and to enquire into charities for the education of the poor, was to remain in force until the year 1820 or the end of the then next session of parliament. The 59 of the same King, c. 81, the next act passed on this subject, for amending the former, extended the powers of the commissioners to the examination of charities generally, and was to remain in force until the month of August 1823, and from thence until the end of the then next session of parliament.

This act directed the commissioners to certify to the attorney general before the institution of any proceedings. By another act of the same year (59 G. 3, c. 91,) for giving additional facilities in applications to Courts of Equity regarding the management of charity estates, after reciting the first clause of each of the preceding acts, it was enacted, that when it shall appear that the directions of a Court of Equity are requisite, the commissioners may certify the particulars to the attorney general, who may apply summarily by petition, or by information in Chancery or the Equity Exchequer; the decree made in either Court to be final, unless appealed from to the House of Lords within a year. By this act also the Lord Chancellor might direct the petition or information to be heard by the Master of the Rolls or the Vice Chancellor; and if there should be an appeal from either to the Lord Chancellor, that appeal was made final. The next act was the 5 G. 4,

c. 56, which continued for four years the powers of the commissioners. By the 10 G. 4, c. 67, these powers were further continued till July 1830. By the 1 and 2 W. 4, c. 34, the powers of the Commissioners, which expired in 1830, were renewed and continued until September 1833, or until the end of the then next session of parliament. These powers, therefore, expired in August 1834, and they have not since been revived. There was nothing in any of these acts to authorize the attorney-general to file an information in charity matters without a relator. The present information was therefore irregular, and the defendant was entitled to the protection of the Court, either by having the information taken off the file, or all proceedings stayed until a proper relator be appointed.

The attorney-general had no power by virtue of his office to proceed without a relator in these matters. But if he had, this information would be clearly irregular, as it purported to proceed under the authority of the acts referred to, the powers of which ceased in 1834, but was not filed until the October of the same year, and consequently out of the powers of those acts. Anterior to 1819, the attorney-general had no power to file an information without a relator, in a case which did not directly concern the rights of the Crown. Now that all the acts since 1819, directing how that officer was to proceed in matters relating to charities, have expired, he must proceed according to the pre-existing practice. Lord Redesdale observes in his book, that "in suits which do not immediately concern the rights of the Crown, some person's name is inserted in the information, who is considered answerable for the proceedings."<sup>a</sup> And again, "when informations concern only the rights of the Crown, or those rights which the Crown takes under its particular protection, they are exhibited in the name of the King's Attorney or Solicitor-General, as informants; in the latter case, always, in the former, sometimes, a relator is named, who sustains and directs the suit."<sup>b</sup> The same learned Lord said, in *Muchlow v. the Attorney-General*,<sup>c</sup> "there are instances where the crown officer, though he might proceed in his own name, requires a relator, that the Court may award costs if it think proper." They cited to the same effect Cooper's *Equity*,<sup>d</sup> the *Attorney-General v. Smart*,<sup>e</sup> the *Attorney-General v. the Earl of Ashburnham*,<sup>f</sup> the *Attorney-General v. Vivian*,<sup>g</sup> where Sir John Leach said, that before the passing of the 59 G. 3. it was the settled practice of this Court that the attorney-general could not proceed in an information respecting a charity, without naming a relator who might be answerable for the costs to the defendants. The *Attorney-General v. Mor-*

*gan*,<sup>h</sup> and a note by Mr. Swanton, in his report of the case of the *Bedford Charity*,<sup>i</sup> where Lord Eldon having said, that the appointment of a relator was not necessary in charity informations, the reporter, as if doubting that *dictum*, refers back to his own note to the case of the *Attorney-General v. Brown*,<sup>k</sup> referring to all the authorities to the contrary.

Mr. Bickersteth, (with whom was Mr. Wm. Russell,) in support of the information. Since the 59 Geo. 3; numerous charity informations have been filed, in which decrees have been made, orders have been pronounced, some executed, others in the course of execution, in all the various stages; and of all these informations, not one had been filed with a relator. After the lapse of many years, it was reserved for this occasion to discover that every one of these decrees were improper, and that all the orders made might be resisted, without danger of contempt; for it was a matter of right, forsooth, that in every information a relator be named. It could not be assumed that all courts of equity had been so blind and so grossly in error; that the counsel who had to defend so many informations, precisely similar to the present, had all been so greatly benighted as not to have observed, and consequently to have availed themselves, of so clear and so obvious a defence as this now urged for the first time! It was rather to be presumed that every thing was rightly conducted: The charity commissioners were bound to certify to the Attorney-General, and when they had done so, then it was that the Attorney-General was authorized to file an information. The certificate under which the present information was filed, was dated when the last act was in force; the commissioners consequently had authority under that act. The argument against this information was, that though the commissioners found out abuses in different charities which ought to be remedied, and certified the same to the Attorney-General, yet, if the act ceased before the suit could be instituted, no redress could be obtained, because there had not been time (as in the present case) to put an information on the files of this Court.

The Attorney-General had an inherent power to file an information without a relator. Cases had been cited, authorities referred to, with which he would not quarrel; but the real question was, had the Attorney-General a right to file a charity information without a relator. Lord Eldon, in the *Bedford Case*, said, "There is no doubt, though relators are commonly required for the purpose of sustaining costs, the Attorney-General may, if he pleases, proceed without a relator."<sup>l</sup> On this *dictum*, which had been partly confirmed by the late Master of the Rolls, in the *Attorney-General v. the Earl of Ashburnham*, they would rely, against Mr. Cooper and Mr. Swanton, and even Lord

<sup>a</sup> P. 22, 4th edit.      <sup>b</sup> P. 99-100.

<sup>c</sup> 4 Dow. 1.      <sup>d</sup> P. 102-4.

<sup>e</sup> 1 Ves. 72, & 2 Ves. 330.

<sup>f</sup> Sim. & Stew. 396.      <sup>g</sup> 1 Russ. 226.

<sup>h</sup> 2 Russ. 306.      <sup>i</sup> 2 Swanst. 520.

<sup>k</sup> 1 Swanst. 305.

<sup>l</sup> 2 Swanst. 520.

shaded to himself. (He referred to the *dictum* and cases in note (d) to the 4th edition of Mitford's pleadings, p. 22.)

The *Master of the Rolls*.—It seems to me, in one part of this case Lord Eldon entertains an opinion decidedly opposite to that of Lord *Stowell*. It behoves me, therefore, to look into the cases referred to, which seem to raise a doubt upon a proposition, which I never doubted. However, that is no reason why I should not look into the cases. Lord *Manfield* used to say that nothing was so difficult of proof as that which every body knew.

His *Honor*, on a subsequent day, in delivering his judgment on the case, observed, that an attentive consideration of the acts removed all doubt on the main question. It was perfectly clear, that although the acts under which the charity commissioners were appointed were only temporary, and the last of them had expired in August, 1834, still the correlative acts, as the 2d of W. 4, c. 57, authorising the Attorney-General to proceed in a certain mode upon their certificate, were permanent, and were not to be confined within the same limits which circumscribed the powers of the Commissioners. It was, therefore, unquestionable, that the power of the Attorney-General to deal with any certificate of the commissioners, made while their authority was in force, continued in full operation, notwithstanding that the official existence of those commissioners had ceased. That being his opinion with respect to one part of the case, he entertained no doubt on the proposition that no relator was necessary in this case, as in practice, indeed, none had ever been required in any information filed by the Attorney-General upon the certificate of the commissioners, under the special authority of the acts. Having come to this result upon the construction of the statutes, and the uniform practice under them, it was unnecessary to consider the general question which had been raised, with regard to the imperative nature of the rule requiring a relator to be named in all ordinary informations respecting charities; but the authorities appeared to be less uniform upon the point than he had previously supposed!

The motion was refused, with costs.

*Attorney-General v. Bullin*, at Westminster, Jan. 22 and 24, 1836.

<sup>1</sup> The present *Vice-Chancellor* said, in the *Attorney-General v. the Skinners' Company*, p. 58, ante, a relator is not necessary. Lords *Eldon* and *Redesdale*, apparently differing on this point, seem to agree on another point not raised in the present case, viz. that a person may be a relator in a charity information, although he has no interest in the matter of the charity. See Mitford's Pleadings, pp. 22, 23, and 99; and *In re the Bedford Charity v. Swanston*, in which Lord *Eldon* expressly said, he need not have an interest; but his lordship decided that such interest is necessary to a petitioner under 52 Geo. 3, c. 101. For different other questions arising upon charity informa-

## King's Bench.

[Before the Four Judges.]

HABEAS CORPUS.—PROCEDENDO.—INFERIOR JURISDICTION.—BAIL.—ATTORNEY.—CERTIFICATE.—RENDER OF PRINCIPAL.

*It is no objection to a writ of habeas corpus, and therefore no ground for issuing a writ of procedendo, that the name of the attorney who sues out the former writ was not at the time of suing it out on the roll.*

In this case an action was brought in the Palace Court, and commenced with serviceable process. A writ of *habeas corpus* was subsequently issued at the instance of the defendant, by which the proceedings were removed into the Court of King's Bench. At the time of issuing the writ of *habeas corpus*, the name of the attorney who sued it out was not on the roll. On this ground a writ of *procedendo* was obtained and issued. Proceedings were then had in the Palace Court on the action.

A rule *nisi* was subsequently obtained at the instance of the bail, for granting the writ of *procedendo* and returning the *habeas corpus*, on the ground that the former writ had improvidently issued.

Cause was afterwards shewn on behalf of the plaintiff below, and it was contended, that the objection to the writ of *habeas corpus* must be considered as fatal, as it was issued by an attorney who had no authority in point of law to issue the writ; secondly, by the statute of 21 James 1, c. 23, s. 3, it is clearly irregular, the *procedendo* having been awarded. At any rate, the bail had no right to make this application.

In support of the rule, it was submitted, that the objection as to the attorney who had sued out the writ of *habeas corpus* being off the roll, it was not here available. Such a course on the part of the attorney might subject him to a proceeding for penalties, but could not affect his client's interests in the proceedings he had taken. It would be most monstrous, that a client should be obliged to make inquiries as to whether a person whom he employed as an attorney, had complied with all the acts passed by the legislature for the regulation of attorneys; yet he must do so if the proceedings taken for his benefit were to be affected by the fact of an attorney not taking out his certificate regularly. Then the statute of James did not apply to cases where the application was made at the instance of the bail. The bail clearly had an interest in these proceedings, as they ought to be empowered, if they thought proper, to surrender the defendant in their own discharge.

The Court was of opinion, that the objection to the *habeas corpus* was not available, and that

tions, see the case of *Attorney-General v. the Churchwardens of St. Dunstan*, 8 Leg. Obs. 460, 461; *Attorney-General v. the Skinners' Company*, ante, pp. 57, 58; and *Attorney-General v. the Fishmongers' Company*, p. 107. ante.



the bail had a right to interfere in the present way, and that the statute of James did not apply to such a writ of *procedendo* as the present, issued under such circumstances. The present rule was therefore directed to be made absolute.

Rule absolute.—*Glynn and others v. Hutchinson*, H. T. 1835. K. B. F. J.

AMENDMENT OF JUDGMENT.—CLERK OF THE TREASURY.—RULES NISI AND ABSOLUTE.

*Where an amendment, although it is a mere misprision of the clerk, may be objected to by the other side, a rule nisi only will be granted in the first instance.*

In this case the plaintiff had obtained judgment against the defendant. In the entry of it in the treasury, certain mistakes, amounting however only to misprisions, were made. It was suggested, that the rule for that purpose ought to be absolute in the first instance.

The Court was of opinion, that under the circumstances the proper rule to be granted in the first instance was a rule nisi.

Rule nisi accordingly.—*John v. Craven*, E. T. 1835. K. B. F. J.

King's Bench Practice Court.

JUDGE'S ORDER.—IRREGULARITY.—TIME FOR PLEADING.—NULLITY.—PLEA.

*What is the meaning of the word "till," in granting time for pleading.*

In this case, before the time for pleading was out, the defendant made an application to a Judge at chambers for the purpose of obtaining further time to plead. The learned Judge after hearing the attorneys on both sides, made an order that the defendant should have "till" a certain day to plead. Afterwards the defendant on that day delivered a plea to the plaintiff without a date. Judgment was then signed by the plaintiff as for want of a plea.

A rule nisi was then obtained on the part of the defendant, to set aside the interlocutory judgment thus signed, as irregular, on two grounds; first, that the plea was a good one, or at any rate only irregular, and not a nullity; and secondly, that the judgment was signed too soon, because the defendant had the whole of the day, till which the time for pleading was enlarged, for the purpose of pleading.

On shewing cause against this rule, it was contended, that the plaintiff was right in treating the plaintiff's plea as a nullity, inasmuch as by the Pleading Rules of Hilary Term 4 W. 4, it was required, that every pleading should be entitled of the day of the month and year on and in which the pleading was filed or delivered. The plea in the present case had not complied with that requisition of the rules, and was therefore a nullity: the plaintiff was therefore entitled to treat it as such, and consequently to sign interlocutory judgment as for want of a plea. The judgment consequently which it was now sought to set aside was perfectly regular.

In support of the rule, it was contended, first, that the defect of the date was a mere irregularity in the plea, and did not render it a nullity. It might be a ground for setting it aside, but was not a ground for treating the plea as a nullity. But even if it were a nullity, and the plaintiff had been entitled so to treat it, he had been too soon in availing himself of his right; as the defendant having the whole of the day till which the time for pleading was enlarged for the purpose of pleading, he might in the course of the day, after the delivery of the supposed bad plea, have delivered another which might be good. Whichever way the proceedings were viewed, it was clear that the plaintiff had been irregular in signing the interlocutory judgment now required to be set aside.

*Patteson, J.*, abstained from giving any opinion with respect to the plea itself, but expressed it as his opinion, that the word "till" was inclusive of the day till which the time for pleading was enlarged. He therefore directed, that the rule for setting aside the interlocutory judgment should be made absolute.

Rule absolute.—*Dakins v. Wagner*, H. T. 1835. K. B. P. C.

INTERPLEADER ACT.—TIME FOR DECLARING.—STAY OF PROCEEDINGS.—LACHES.

*Where a plaintiff is out of Court for not declaring in due time, although he has aided his proceedings in consequence of an application going on in another quarter with respect to his claim.*

The sheriff in this case applied to the Court for a rule under the Interpleader Act, for relief against conflicting claims set up by different parties on the property seized. The plaintiff had brought an action of trover for the goods seized under the execution writ placed in the hands of the sheriff. The writ of summons by which his action was commenced, was issued on the 28th of May, 1833. The sheriff obtained a rule to shew cause under the Interpleader Act, on the 12th of June, with a stay of proceedings. This rule was enlarged to shew cause at chambers. The parties appeared on the enlarged rule before a learned Judge, and the matter then stood over for further affidavits to be filed. Matters thus stood over in this way until the month of September 1834, when on attending an appointment before Mr Baron Bolland, his Lordship was of opinion, that without consent he had no power to decide the matter in dispute. Consent being refused, application was made to the Court of Common Pleas, in which the rule had been originally obtained by the sheriffs, and the Interpleader rule discharged.

The plaintiff then declared in this action December 22d, 1834.

An application was then made to this Court, and a rule nisi obtained, for staying proceedings in this action, on the ground that a year had elapsed since the suing out of the process and the time of declaring.

On showing cause against this rule, it was contended, that the whole period during which the master of the Interpleader rule was pending, and which was drawn up with a stay of proceedings, must be thrown out of the calculation. If it were, the Court would find that the plaintiff had declared within a year after the service of his process. There arises consequently no ground for staying the plaintiff's proceedings.

Patteson, J., was however of opinion, that the Common Pleas interpleader rule had expired at the end of Trinity vacation 1833; and as there was no proof given that the present defendant had acted upon it afterwards, the present rule must be absolute for staying the plaintiff's proceedings.

Rule absolute accordingly.—*Unite v. Humphery and another*, H. T. 1835. K. B. P. C.

### Exchequer at Pleas.

MISNOMER.—PLEA IN ABATEMENT.—AMENDMENT.—WAIVER.

*Since the Law Amendment Act, a mistake in the plaintiff's christian name, only forming a ground for application to amend by the defendant, it is unnecessary to apply on the part of the plaintiff for that purpose.*

In this case the plaintiff's real name was John Moody, but the writ and all subsequent proceedings in the action described him as William Moody. Issue having been joined, an application was made on behalf of the plaintiff to amend the mistake.

The Court was of opinion, that the amendment was unnecessary on behalf of the plaintiff, if the person called in the proceedings William Moody, was really John Moody. Previous to the Law Amendment Act, the defendant could only have taken advantage of the error by plea in abatement; since that statute passed, he must apply under such circumstances to amend, at the expense of the plaintiff. Not having done so, no advantage could be taken of the error, if at the trial the identity of the real plaintiff, and the person mentioned in the proceedings as the plaintiff, could be established.

Rule refused.—*Moody v. Oslatt*, H. T. 1835. Excheq.

AFFIDAVIT OF DEBT.—DESCRIPTION OF DEPENDENT.—PRINCIPAL AND AGENT.

*What is a sufficient description of a deponent, in an affidavit of debt.*

In this case an application was made by the defendant to discharge him out of custody, on the ground of the deponent who made the affidavit of debt having been improperly described. He merely stated himself to be the agent and solicitor of the plaintiff, who was an hotel-keeper, but did not mention the means he had of information, so as to enable him to speak with certainty on the debt alleged to be due from the defendant to the plaintiff.

The Court was of opinion, that the affidavit

was sufficient, and therefore refused to interfere to discharge the defendant.

Rule refused.—*Short v. Campbell*, H. T. 1835. Excheq.

PAYMENT INTO COURT.—TRUSTEE.—EXTRA COSTS.—STATING PROCEEDINGS.

*If one action is brought under suspicious circumstances, the Court will not interfere, on a motion to stay proceedings on payment of costs, and of money into Court, to give the plaintiff his extra costs, but will leave the latter to make a substantive application.*

An application was made in this case to stay proceedings, on payment into Court of the sum sought to be recovered, with costs. A rule nisi having been obtained—

Cause was shewn against it. It then appeared that there was some doubt whether the plaintiff had any authority to bring the action.

The Court then made the rule absolute, leaving it to the plaintiff to come to the Court with a substantive motion to obtain his extra costs.

Rule absolute accordingly.—*Jones v. Bramwell*, H. T. 1835. Excheq.

### NOTES OF THE WEEK.

#### HOUSE OF LORDS.

##### Bills for second Reading.

Title of the Bill.	Proposer.
Residence of Clergy.	Lord Brougham.
Pluralities Prevention.	Lord Brougham.
Ecclesiastical Jurisdic- tions.	Lord Brougham.
Illegal Securities.	

#### HOUSE OF COMMONS.

##### Bills to be brought in.

Law of Tenure.	Sir J. Campbell.
Law of Escheat.	Sir J. Campbell.
Prisoners' Defence.	Mr. Ewart.
County Coroners.	Mr. Cripps. 5 May.
Poor Law Amendment.	Mr. Trevor.
Registration of Births, &c.	Mr. Wilks. 19 May.
Tithes Commutation.	Chanc. of Excheq.

##### Second Reading.

Law of Libel.	Mr. O'Connell.
Bankruptcy Funds.	Master of the Rolls.
Ecclesiastical Courts.	Attorney General.
Clergy Discipline.	Attorney General.
Dissenters' Marriages.	Chancellor of Exch.
	29th April.
Infants' Property (Ireland).	
Contempts in Equity (Ireland).	
Oaths Abolition, 13th May.	

*In Committee.*

Copyholds Enfranchisement.	Sir J. Campbell.
Highways.	Mr. Lefevre.
Registration of Voters.	Lord J. Russell.
	6th May.

*Consideration of Reports.*

Execution of Wills.	Sir J. Campbell.
	12th May.
Law of Executors, &c.	Sir J. Campbell.
	12th May.
Abolishing Imprisonment for Debt, &c.	Sir J. Campbell.
	15th May.

## LORD CHANCELLOR OF IRELAND.

We are informed, on satisfactory authority, that Sir Edward Sugden, on retiring from the office of Lord Chancellor of Ireland, will not return to the Bar, but accept the usual pension. We think his case will not come within the statutes which render pensioners ineligible to be elected members of Parliament. See the law on this subject, in our last Number, p. 481. An instance has occurred, we understand, in which a former Lord Chancellor of Ireland sat and voted in the House of Commons.

## REPEAL OF ATTORNEYS' CERTIFICATE DUTY.

We understand that petitions are preparing for the repeal of the Annual Certificate Duty of Attorneys and Solicitors. We have frequently adverted to this subject, and shall be glad to publish the substance of a well considered Petition, in order that the attention of the Profession in different parts of the country may be attracted to it. The tax is unjust, because it is inflicted on one class of the community only; and it is unequal in its operation, bearing on the comparatively poor as heavily as on the rich. In the result, it must have the effect of a tax on Justice, and ought on every principle to be repealed.

## EXCHEQUER OF PLEAS SITTINGS.

The entry of causes for the Second Sittings in Middlesex closes on Monday evening, April 27th, at 8.

For the First Sittings in London, on Thursday evening, April 30th.

For the Second Sittings in London, on Monday evening, May 4th.

For the Sittings after Term in Middlesex, on Tuesday evening, May 12th: and,

For the Sittings after Term in London, on Wednesday evening, May 13th.

Mr. Baron Gurney will try Causes at the Sittings in Term.

Causes remaining untried from the First Sittings in Term, are taken first at the Second Sittings.

Undefended Causes are taken at the Sittings of the Court.

## ANSWERS TO QUERIES.

## Estate of Property and Conspawning.

STOCK.—HUSBAND AND WIFE. P. 399.

I think that *A.*, the widow, is entitled to the stock in question by survivorship. It cannot be said that the fact of the husband's having it in his power to transfer the stock without the consent of his wife, amounts to a reduction of the chose in action into possession; indeed the point appears too clear to admit of any doubt. Where, indeed, a husband had during his life assigned stock belonging to his wife for valuable consideration, such an assignment would be supported in equity, on the ground that the husband having had the power to reduce it into possession, should be considered as having done that which he might and ought to have done. *Henner v. Morison*, 3 Russ. 65. The husband, therefore, not having reduced the stock into possession, it follows, that as the husband and wife were entitled to it by entirety, the stock belongs to her by survivorship. *Doc v. Parratt*, 5 T. R. 652. (1)

## Common Law.

LIABILITY OF INNKEEPERS.—GUEST. P. 336.

*T. P.* will find a confirmation of the text of Blackstone in Bac. Ab. tit. Inns and Innkeepers, C. 1 & 3. The 29 Car. 2, c. 7. s. 3, allows innkeepers and keepers of eating-houses to cook and sell provisions, to those not otherwise provided for, on a Sunday. SPES.

## THE EDITOR'S LETTER BOX.

The arrear of Reviews of New Books, we hope to dispose of in the next and following number.

We thank "An Old Subscriber."

The Queries and Answers of A. H. D.; Aspiro; A. Z.; A. W. W.; W. H. S.; have been received.

A comparatively small number of the Municipal Corporation Report has been printed. The subscribers who require it will please to make early application.

The Title-Page, Contents, and Index to the Ninth Volume, will be published early in May, without any extra charge.

The Letter of Justitia, on the Regulations of the Inns of Court, shall be immediately considered.

# The Legal Observer.

Vol. IX.

**SUPPLEMENT  
FOR APRIL, 1835.**

No. CCLXVI.

—“ Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”  
HORAT.

## LEGAL BIOGRAPHY.

### No. VIII.

SIR MATTHEW HALE.

IN continuing our series of the distinguished Lawyers of past times, we avail ourselves of the valuable and interesting memoirs of Sir Matthew Hale, by Dr. Williams,\* who has evidently left no means whatever untried to render his work both authentic and complete. Our selection of incidents must necessarily be very limited in extent, and confined to those which are almost strictly of a legal character.

Matthew Hale was born at Alderley, Nov. 1, 1609. His father, Robert Hale, was a member of Lincoln's Inn, but entertained scruples on the phraseology of pleadings. Both his parents died before Hale attained his 5th year. He was educated at a private school, where he was distinguished for his proficiency in learning; and before he was seventeen, he went to Magdalen Hall, Oxford.

Here he became attached to stage entertainments and neglected his studies, was fond of dress, and delighted in company. He preserved, however, his purity and probity of mind. He excelled in gymnastic exercises, particularly in fencing, and was thence ambitious of “trailing a pike” in the army of the Prince of Orange. This intention, however, was happily frustrated. A law suit, which involved part of his estate,

led him to London, and brought him into the society of Mr. (afterwards Serjeant) Glanville, who, observing his clearness of intellect and solid judgment, recommended him to pursue the law. Hale at length adopted this advice, and abandoned for ever his theatrical predilections.

He was admitted student of Lincoln's Inn on the 8th November, 1629. He was then just twenty, threw aside his gay attire, and for awhile studied sixteen hours a-day. He occasionally went into convivial company, until one of his associates having become insensible from intoxication, and apparently dead, Hale solemnly vowed to abstain from all such companionships, and he never after on any occasion even drank a health. He now divided his time between his exercises of piety, his professional duties, and general science. The following are his celebrated rules of conduct.

*Morning.*—I. To lift up the heart to God, in thankfulness for renewing my life.

II. To renew my covenant with God in Christ: 1. By renewed acts of faith, receiving Christ, and rejoicing in the height of that relation. 2. Resolution of being one of his people, doing him allegiance.

III. Adoration and prayer.

IV. Setting a watch over my own infirmities and passions, over the snares laid in our way. *Perimus licitis.*

*Day employment.*—There must be an employment—two kinds:—

I. Our ordinary calling, to serve God in it. It is a service to Christ, though never so mean, Coloss. iii. Here faithfulness, diligence, cheerfulness. Not to overlay myself with more business than I can bear.

II. Our spiritual employments. Mingle somewhat of God's immediate service in this day.

*Refreshments.*—I. Meat and drink, moderation, seasoned with somewhat of God.

\* *Memoirs of the Life, Character, and Writings of Sir Matthew Hale, Knight, Lord Chief Justice of England*, by J. B. Williams, Esq. LL.D. F.S.A. Published by Jackson & Walford, St. Paul's Church Yard.

II. Recreation: 1. Not our business. 2. Suitable. No games, if given to covetousness or passion.

*If alone.*—I. Beware of wandering, vain, lustful, thoughts; fly from thyself, rather than entertain these.

II. Let thy solitary thoughts be profitable; view the evidences of thy salvation, the state of thy soul, the coming of Christ, thy own mortality; it will make thee humble and watchful.

*Company.*—Do good to them. Use God's name reverently. Beware of leaving an ill impression of ill example. Receive good from them, if more knowing.

*Evening.*—Cast up the accounts of the day. If aught amiss, beg pardon. Gather resolution of more vigilance. If well, bless the mercy and grace of God that hath supported thee.

Mr. Hale's character soon attracted attention, and he acquired the friendship of Sir Wm. Noy, (afterwards Attorney-General), of the learned Selden, of Mr. Vaughan (afterwards Chief Justice of the Common Pleas), and of Dr. Usher, the Primate of Ireland. Under this high encouragement he pursued his studies with avidity, was unwearied in searching records, and digested into a common-place book the result of his reading. This volume is preserved in the Library of Lincoln's Inn, and is esteemed of an excellent method. Having surmounted the difficulties of his profession, Hale extended his investigations to the Civil Law, the mathematics, natural philosophy, ancient history, and other subjects, which he regarded as *diversions*, when weary with professional labour.

The earlier records of Lincoln's Inn being in an imperfect state, the date of his call to the Bar has not been ascertained. His reputation soon became deservedly high, and he was assigned as Counsel for the Earl of Stafford in 1640, and for Archbishop Laud, in 1644. He was afterwards nominated as counsel to assist the Parliamentary Commissioners in treating with those of the King; and on several other state occasions his learning and judgment were called into exercise. The most memorable of these was his employment for Charles the First, when that monarch was tried in 1648. During the Commonwealth he defended several of the Peers who were brought to trial, and in whose behalf he displayed so much zeal that he was threatened with the vengeance of the government. He answered that he was pleading in defence of those laws which they declared they would maintain and preserve; that he was doing his duty to his client; and that he was not to be daunted with threatenings.

Such, however, was the esteem in which his learning and integrity were held by all parties, that in January, 1651, he was appointed by the Parliament one of the Committee for considering the Reformation of the Law. In January 1653, he was created a Serjeant at Law; and on Cromwell's Installation as Lord Protector, in December of that year, after renewing the patents of the Judges he chose to continue, he proposed to make Hale a Judge—the only new one he intended to appoint. Hale was reluctant to accept the dignity, and being pressed for his reason, stated that he was not satisfied with the lawfulness of Cromwell's authority. Cromwell replied "that since he had possession of the government, he was resolved to keep it, and would not be argued out of it; that nevertheless it was his desire to rule according to the laws of the land, for which purpose he had selected *him*; and that if not permitted to govern by red gowns, he would do it by red coats." On further reflection, Hale came to the conclusion, that as it was absolutely necessary to have justice and property at all times upheld, it was no sin to take a commission from those whom he regarded as usurpers. Hale had a strong repugnance to sit on criminal trials, and never would preside on offences against the state.

"Not long after he was made a judge, a trial took place before him at Lincoln under the following circumstances. An inhabitant of that city, who had been of the king's party, being met by a soldier of the garrison in the fields, with a fowling-piece on his shoulder, was accused of disobeying the protector's order—that no such persons should carry arms. A conflict ensued, and the soldier was well beaten and conquered. So soon as he recovered sufficiently to reach the town, he made his case known to one of his comrades, and prevailed upon him to accompany him, that, together, they might avenge the injury. When their victim approached, the gun was again demanded; it was refused; and, while struggling with one of the soldiers, the other inflicted a mortal blow by thrusting his sword through the man's body. The melancholy catastrophe happening at the time of the assizes, both the soldiers were at once arraigned. No evidence being given against the one of previous malice, *he* was found guilty of manslaughter, but the other was convicted of murder. Colonel Whaley, who commanded the garrison, urged vehemently that the man was killed for disobeying the protector's order, and that the soldier merely discharged his duty. Hale, however, paid as little attention to his reasons as his threats, and not only pronounced sentence of death, but ordered execution to follow so quickly as to prevent the possibility of a reprieve.

"In another case, where the protector (being interested) had ordered a jury returned, Hale took occasion to display the illegality of the procedure: he showed, from the statute book, that all juries were to be returned by the sheriff, or his lawful officer; he likewise dismissed the jury, without trying the cause. Cromwell angrily told him he was not fit to be a judge. Hale answered that it was very true."

Soon after this event, he altogether declined interfering in criminal cases; alleging that the four terms and two circuits ought to suffice.

In 1654, in Cromwell's second parliament, Hale was elected one of the Knights of the Shire for the county of Gloucester. When a proposal was made to destroy the records in the Tower, and to settle the nation on a new basis, he pointed out the madness of the proposition, its injustice, and the evils that would follow from it; and he did it with such clearness and strength of reason, as to confound its fanatical originators.

On the death of Cromwell, he refused the new commission which Richard offered him. He was urged by the rest of the Judges, as well as others, to alter his purpose; but he declared he could no longer act under such authority.

In 1660, Hale attended the Convention Parliament, as one of the Members for Gloucestershire, and bore a part in the restoration of the legitimate Sovereign. The King, at a very early period, proposed in person an act of indemnity. Hale was named one of the Committee, and exerted all his powers in support of the Bill. He was included in the Special Committee for the trial of the Regicides, and was elevated to a Chief Seat on the Bench. On the 7th November 1660, he was created Lord Chief Baron, and the Earl of Clarendon, as Lord Chancellor, declared, "that if the King could have found out an honester or fitter man for that employment, he would not have advanced him to it: he had, therefore, preferred him, because he knew none that deserved it so well."

The Practice of the Exchequer, by reason of his diligence, exactness, and impartiality, became greatly augmented; and although some thought that he did not despatch matters quick enough, suitors found to their great benefit, that while his anxiety to put a *final* end to causes made him somewhat slower in deciding them, those which he tried were seldom, if ever, tried again. The following are some of the anecdotes related of his scrupulous justice and impartiality.

"A nobleman called to explain a suit in which

he was interested, and which was shortly to be tried, in order, as was alleged, to its being better understood when actually heard in court. The Chief Baron interrupted him, saying that he did not deal fairly to come to his chamber about such affairs, for he never received any information of causes but in open court, where both parties were to be heard alike. Nor would he suffer the noble duke to proceed. His grace retired dissatisfied, and complained of it to the king, as a rudeness not to be endured. But his majesty bid him content himself that he was no worse used; adding, that he verily believed he would have treated himself no better had he gone to solicit him in any of his own causes.

"While on the circuit, a gentleman who had a trial, presented him with a buck. So soon as the trial commenced, Sir Matthew, remembering the name, asked whether "he was the same person who sent him the venison?" Finding that to be the case, he told him—"he could not suffer the trial to go on until he had paid him for it." The gentleman remarked "that he never sold his venison, and that he had done nothing to him which he did not do to every judge that had gone the circuit;" and his statement was immediately confirmed. But the Chief Baron remained firm, and the record was withdrawn.

"On an occasion when the dean and chapter of Salisbury had a cause to try before him, he directed his servants to pay for the six sugar loaves which, according to custom, were presented to him on the circuit by that body."

The only blot in his judicial character was that of his concurring in the verdict against the alleged witches, tried at Bury St. Edmunds—a fault to be defended or excused only by the general belief then entertained of the prevalence of the offence. It is right to quote the cautious and moderate language in which he charged the jury:

"Sir Matthew, evidently puzzled with the case, took especial pains to arrive at the truth, and in his address to the jury said he should not repeat the evidence, lest by so doing he should wrong it on the one side or the other. Only this he acquainted them with, that they had two things to inquire, 1st, whether or not these children were bewitched; and, 2d, whether the prisoners at the bar were guilty of bewitching them? That there were such creatures as witches he made no doubt at all, and he appealed to the Scriptures, which had affirmed so much, and also to the wisdom of all nations which had provided laws against such persons; and such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishment proportionable to the quality of the offence. He desired them strictly to observe the evidence, and implored the great God of heaven to direct their hearts in so weighty a matter; for to condemn the innocent, and to let the guilty go free, were both 'an abomination to the Lord.'"

Sir Matthew sat in Clifford's Inn with Sir O. Bridgman, to settle the differences between Landlord and Tenant, after the fire of London in 1663, and he devised the rules laid down for settling the numerous questions which came before the Commissioners. In 1668 he published anonymously his Address to the Young Students of the Common Law. In 1671, on the death of Sir John Keyling, he was made Chief Justice of the King's Bench. The following account is given by Dr. Williams, of his exemplary conduct at this time :

"An instance occurred, in a case reported by Ventris,<sup>b</sup> where a Captain C—, and one of his serjeants, thinking fit to carry military tactics into civil affairs, had rescued, by means of twenty or thirty soldiers, an individual arrested for debt after enlisting. His lordship there, indeed, furnished an illustration of what he meant by 'personated anger.'<sup>c</sup> 'Whatever you military men think,' was his address in open court, 'you shall find that you are under the civil jurisdiction; and you but gnaw a file; you will break your teeth ere you shall prevail against it.' He committed both the culprits to Newgate; and on their subsequent appearance before him, he asked 'why an information was not exhibited?' telling the city counsel, 'that if the sheriffs did not prosecute, the court would, for it was a matter of great example, and ought not to be smothered.'

"Laudably anxious to satisfy the public, and suitors especially, that what he did was *right*, he not only gave the *reasons* of his judgments in intricate cases, but by eliciting observations, and his own remarks, constantly took pains to make whatever passed intelligible, and instructive. 'I have known,' says Roger North, 'the Court of King's Bench sitting every day from eight to twelve, and the Lord Chief Justice Hale managing matters of law to all imaginable advantage to the *students*, and in which he took a pleasure, or rather pride. He encouraged inquiry when it was to the purpose, and used to debate with the counsel, so as the court might have been taken for an academy of sciences, as well as the seat of justice.

"Nor was he content with this service, valuable as it was, and novel also, and interesting. He assisted in *private* such as applied to him; he advised them to use their books diligently, and directed their studies. When he saw any thing amiss, particularly if he observed a love of finery, he did not withhold admonition. It was done, however, in a smiling, pleasant way; usually by observing that *that* did not become their profession. The sight of students in long periwigs, or attorneys with swords, was known

to be so offensive to him, as to induce those who loved such things! to avoid them when they waited upon him, in order to escape reproof."

In 1673, he printed an Essay on Gravitation; and two years afterwards, his "*Difficiles Nuge*," or Observations on the Weight and Elasticity of the Air. Soon after this time his constitution declined; he was afflicted with asthma, and then with dropsy. He was desirous of surrendering his office to the king; but his majesty for some time deferred receiving it, until in February 1675-6, Sir Matthew, urged by his increasing infirmities, waited on the king, who treated him with great affability, and was at length induced to accept his resignation, continuing his pension and requesting his advice whenever his health would permit.

He retired to his seat at Alderley, in Gloucestershire. The change, though to his native air, was unavailing, but he retained his delight in devotion and study. Here he published his treatise on the Primitive Origination of Mankind, which had occupied in its composition a large part of his leisure hours. His mental faculties continued to the last, and he died without a struggle on the 25th of December, 1676-7.

Into the consideration of the habits and character of Sir Matthew Hale, our limits prevent us at present from entering; but we shall return to the subject at the first opportunity.

Dr. Williams has, we think, conferred an essential benefit on the profession, and especially on its younger members, by the production of this volume. No one can rise from an attentive perusal of these memoirs, without being in some degree improved both as a lawyer and a man. We urgently recommend the work to every student in particular, and to our brethren in general.

## LIST OF EXPIRED AND EXPIRING LAWS.

<i>Insolvent Debtors (England).</i>	<i>Duration.</i>
7 G. 4. c. 57 (26 May, 1826), continued and amended.	1 June, 1835, and end of Session.
1 W. 4, c. 38.	
2 W. 4, c. 44 (6 June 1832), to amend and consolidate the Laws for the Relief of Insolvent Debtors in England.	

<sup>b</sup> Reports, p. 260, part i.

<sup>c</sup> Sometimes a personated anger, managed with judgment, is of singular use, especially in persons in authority; but such an anger is but a painted fire, and without perturbation. Works, vol. ii. p. 390.—"Of Moderation of Anger."

**Real and Mixed Actions.**

3 & 4 W. 4, c. 27 (24 July, 1833), for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto.  
S. 36, 37. Real and mixed actions, &c. abolished (except writs of Dower, Quare Impedit, and Ejectment).

In certain cases after 1 June, 1835.

**Law Amendment.**

3 & 4 W. 4, c. 42 (14 Aug. 1833), for the further Amendment of the Law and the better Administration of Justice.  
S. 3. Limitation of certain actions to be brought after the end of the session 3 W. 4.

10 years.  
1 year.  
3 years.  
i. e.  
29 Aug { 1835  
          { 1837  
          { 1843

**Turnpike Roads (Great Britain).**

4 W. 4, c. 10 (26 Mar. 1834), for continuing the several Acts for regulating the Turnpike Roads in Great Britain which will expire with the present or the next Session of Parliament.

1 June, 1836.

S. 1. or if Parliament be then sitting, until the end of that session.

**PARLIAMENTARY RETURNS.**

**KING'S COUNSEL.**

Return to an Order of the Honourable the House of Commons, dated 20th March, 1835: for

A Return of Licences granted, or Certificates that a Licence had been applied for, during the last ten years, to King's Serjeants and King's Counsel in England and in Ireland, to enable them to plead against the Crown, and the whole amount of fees paid for the same, and the amount demanded for every such licence.

**England.**

Number of Licences or Certificates granted	339
Amount of Fees paid for the same	£ s. d. 3110 6 6
Amount demanded for every such Licence or Certificate	9 3 6

N. B.—These fees have been demanded from time immemorial, and they are all paid into the public purse.

Whitehall,  
23d March, 1835. }

W. GREGSON.

**Ireland.**

327 Licences, at 1l. 9s. each . . . £474 3s.

Dublin Castle,  
3d April, 1835. }

WM. GOSSETT.

**LAW PROMOTIONS.**

**ATTORNEY-GENERAL.**

Sir John Campbell.

**SOLICITOR-GENERAL.**

R. M. Rolfe, Esq.

**KING'S COUNSEL.**

Robert Alexander, Esq., of the Northern Circuit. 10th March.

Thomas Starkie, Esq., of the Northern Circuit. 3d April.

**FURTHER LIST OF PERPETUAL COMMISSIONERS UNDER THE FINES AND RECOVERY ACT.**

Ans dell, John, St. Helen's, Lancaster.

Chase, Frederick, Luton, Bedfordshire,  
For Bedfordshire and Hertfordshire.

**ATTORNEYS TO BE RE-ADMITTED**

*On the last Day of Easter Term.*

**KING'S BENCH.**

Coombe, Wm. Alexander, 44, St. George's Terrace, Milton next Gravesend.

Dennis, George, 31, Frith Street, Soho.

Hearle, Francis, 43, Barnard Street, Russell Square.

Hetting, William Ernest, Bristol, Somerset.

Houghton, Thomas, Liverpool.

Jones, John, Brecon, Brecknock.

Lewis, Thomas Plomer, Hitchin, Herts.

Long, Charles, 9, St. Michael's Alley, Cornhill.

Norris, William, Stroud, Gloucester, late of Manchester, and Staple Inn.

Parsons, Frederick, Lancaster.

Pinero, John Daniel, Bidborough Street, Burton Crescent.

Rudge, Henry, Stroud, Gloucester.

Tilladams, Thomas Edwin, Bury Street, Bloomsbury.

Upperton, John, late of No. 11, Lincoln's Inn, now of Hawkhurst, Kent.

Wilme, Thomas, formerly of Manchester, now of Cambridge.

**COMMON PLEAS.**

Hallett, William, late of Northumberland Street, St. Mary-le-Bone; now of Chancery Chambers, Quality Court, Chancery Lane.

Partridge, John Charles, late of Nicholas Lane, Lombard Street; now of No. 2, Albany Place, York Road, Westminster Bridge Road.



## LAW OF INHERITANCE, WILLS, &amp;c.

Sir,

At a period when the improvement of our laws forms so prominent a feature in the proceedings of both houses of parliament, perhaps you will not deem unworthy a place in the *Legal Observer*, the following remarks on a custom which has of late years prevailed to a considerable extent in this country; I allude to the practice of individuals bequeathing their property to *strangers*, leaving, in many instances, their *next of kin* wholly unprovided for.

Although the divine law exhorts us to succour our necessitous kindred,<sup>a</sup> yet how frequently do we find persons (owing perhaps to some trifling family dispute), proving themselves utterly forgetful of the excellent maxim to forgive one's own brother "not only seven times, but seventy times seven," by setting aside their natural heirs, and transferring their property to those who bear no affinity to them. It will surely be admitted, that capricious or weak-minded individuals should be restrained from impoverishing their families, in favor of these *heredipetæ*;<sup>b</sup> these fawning sycophants, who like vultures panting for their prey, hover over the couch of the departing. According to the Mosaic law, the interests of the next of kin were carefully protected:<sup>c</sup> nor were the Romans less distinguished than the Jews for distributing justice; for we find it decreed by the law of the Twelve Tables,<sup>d</sup> Tab. 5. law, 2. "If a man die, and has no children to succeed him, let his nearest relations be his heirs." Indeed, such an abhorrence had the Romans to disinheriting parties, that they termed it "*testamenti ordinem violento animo confundis*," confounding the natural order of testaments by a turbulent mind; and Valerius Maximus, Lib. vii. c. 7, cites various examples of the Romans cancelling unnatural wills. It is also recorded, Tac. Ann. Lib. 2. p. 51, that the Emperor Tiberius would never take any benefit of a will that was made in his favor by a stranger,<sup>e</sup> or in spite, or hate, or prejudice to others.<sup>f</sup> Tacitus

<sup>a</sup> First Ep. Gen. St. John, c. iii. Gen. xv.

<sup>b</sup> So the Romans termed those who by flattery and presents endeavoured to obtain the good will of old men and widows, in order to be made their heirs.

<sup>c</sup> Numb. xxvii. Deut. xxi.

<sup>d</sup> Vide Father Catron and Ronille's collection of the Laws of the Twelve Tables.

<sup>e</sup> Pliny, in his panegyric on the Emperor Trajan, mentions a tax that had been laid on wills by a former Emperor, which tax was light for *strangers* to pay who derived property from others, but was very grievous to such as obtained their estates by right of kindred: "therefore," says he, "the tax was continued on aliens, but abolished with regard to relatives."

<sup>f</sup> Plutarch (in *Agis*), says, that Lycurgus, in the *Agrarian Law*, obliged every man to leave

his house and lands to his heir; and further remarks, that when this law was abrogated (through the influence of *Epistodeus*, the *Ephore*), the generality became poor and miserable, liberal arts and sciences were neglected, and the city was filled with a class of discontented persons, always envious and hating the rich.

From the above remarks it is obvious, that our Law of Inheritance requires improvement; let me therefore hope, Sir, that through the instrumentality of your valuable work, some remedy may be devised, to prevent in future the immediate relatives of the affluent from being necessitated to seek parochial relief.<sup>1</sup>

CANDIDATUS JURIS.

## INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

April, 1835.

Litchfield, Elijah, Chancery Lane  
Hall, Cheslyn, New Boswell Court.  
Fellows, Thomas, Rickmansworth, Herts.  
Lane, James, Chancery Lane.

Number of Members, deducting deceased  
and retired Members . . . . . 1010

20th April, 1835.

his house and lands to his heir; and further remarks, that when this law was abrogated (through the influence of *Epistodeus*, the *Ephore*), the generality became poor and miserable, liberal arts and sciences were neglected, and the city was filled with a class of discontented persons, always envious and hating the rich.

<sup>1</sup> This rule obtained with us also, in regard to lands, so late as the 32 of Henry the Eighth. See Stat. at Large, 32 Hen. 8, c. 1.

<sup>2</sup> A custom somewhat similar anciently existed in England; for Glanville, who wrote *Temp. Hen. 2.*, tells us, l. 2, c. 5, that "a man's personal estate was to be divided into three equal parts, of which one part went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal."

<sup>3</sup> Even Mr. Justice Blackstone, whose opinion, generally speaking, is unfavourable to any alteration in the law on this subject, observes, "it would not be amiss if individuals were bound to leave their relatives, at the least, <sup>4</sup> necessary subsistence."

## LIST OF NEW PUBLICATIONS.

An Introduction to Conveyancing, and the new Statutes concerning Real Property, with Precedents. By W. Hayes, Esq. Price 18s. boards.

Elements of the Logical and Experimental Sciences, considered in their relation to the Practice of the Law. Price 14s. boards.

A Practical Guide to Executors and Administrators, comprising a Digest of the Law, Stamp Office and other Directions. By R. Matthews, Esq. Price 8s. boards.

New Cases in the Court of Common Pleas and other Courts, Michaelmas and Hilary Terms. By P. Bingham, Esq. Vol. I. Part III. Price 8s.

Reports of Cases in the Court of King's Bench, Michaelmas and Hilary Terms, 4 W. 4. By R. V. Barnewall and J. L. Adolphus, Esqrs. Vol. V. Part IV. Price 7s. 6d.

A Popular and Practical Introduction to Law Studies. By Samuel Warren, Esq. F.R.S.

General Practice of the Law. By J. Chitty, Esq. Vol. III. Part I.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From Mar. 20, to April 17, 1836, both inclusive, with dates when gazetted.*

Barker, John Hawksworth, Thorn, York. Mar. 27.  
Bazeley, Augustus, Penzance, Cornwall. Apr. 10.  
Darlington, John, Leeds, York. Mar. 24.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Mar. 20, to April 17, 1836, both inclusive, with Dates when gazetted.*

*The Names printed in italics, are the Partners who receive and pay Debts.*

Aubrey, James, & George Gatton Hardingham, King's Road, Gray's Inn, Attorneys at Law & Solicitors. Apr. 10.  
Barney, John, & Henry Gilbert, Southampton, Attorneys & Solicitors. Apr. 14.  
Parker, Robert, & William Tiley, Axbridge, Somerset, Attorneys, Solicitors, & Conveyancers. Apr. 3.  
Roberts, Henry, & Charles Roberts, Stourbridge, Worcester, Attorneys, & Solicitors. Mar. 27.  
Weston, Robert, & John Moore, Banbury, Oxford, Attorneys at Law. Mar. 27.  
*Woodward, William Wilton, & Henry Whateley, Pershore, Worcester, Attorneys & Solicitors. Mar. 31.*

## BANKRUPTCIES SUPERSEDED.

*From Mar. 20, to April 17, 1836, both inclusive, with Dates when gazetted.*

Baker, Geo., High Hill Ferry, Upper Clapton, Middlesex, Dyer. Mar. 20.  
Betteley, John, Liverpool, Plumber & Painter. Mar. 31.  
Daniel, Philip Howe, Razces, Bosbury, Hereford, Cider Merchant & Cattle Dealer. Apr. 14.  
Gunning, William Broadbent, Egham, Surrey, Bricklayer, Apr. 17.

Hancock, Charles, Hillingdon, near Uxbridge, Middlesex, Brickmaker. Mar. 24.  
Harwood, James, Over Darwin, Lancaster, Cotton Cloth Manufacturer & Provision Shopkeeper. Apr. 3.  
Havers, Henry, Hadleigh, Suffolk, Linen Draper. Mar. 27.  
Holden, John, Bacup, Whalley, Lancaster, Cotton Spinner & Manufacturer. Apr. 3.  
Layton, John Wm., Kew, Surrey, Coal & Corn Merchant. Mar. 20.  
Meek, John, Pond Park, Hampstead, Middlesex, Livery Stable Keeper. Mar. 31.  
Parmenter, John, Melbourn, Cambridge, Linen Draper. Apr. 17.  
Wright, Henry, Old Broad Street, Merchant. Mar. 20.

## BANKRUPTS.

*From Mar. 20, to April 17, 1836, both inclusive, with Dates when gazetted.*

Allen, Wm., Holt, Norfolk, Grocer, & London Porter Dealer. *Simpson, Norwich; Taylor, Featherstone Buildings. Mar. 24.*  
Allison, Tho., Manchester, Warehouseman. *Owen, Manchester; Scott, Lincoln's Inn Fields. Mar. 27.*  
Andrews, Harry, Bristol, Paper Hanger. *Poole & Co., Gray's Inn, Square; Messrs. Lincott, Bristol. Mar. 27.*  
Arnold, Maria, Tavistock Street, Covent Garden, Bookseller & Publisher. *Abbott, Off. Ass.; Townsend, Verulam Buildings, Gray's Inn. Mar. 31.*  
Bowerman, Rich., sen., & Geo. Bowerman, Ensham, Oxford, Carriers & Coin Dealers. *Messrs. Walsh, Oxford; Powmell & Co., Staple Inn. Mar. 20.*  
Bowerman, James, Oxford, Chemist & Druggist. *Fleming, New Boswell Court, Lincoln's Inn; Looker, Oxford. Mar. 20.*  
Bevan, Charlotte, Great Portland Street, Mary-le-bone, Middlesex, Glass & China Dealer. *Green, Off. Ass.; Helton, New Inn. Mar. 24.*  
Bayley, John, Manchester, Commission Agent. *Owen, Manchester; Scott, Lincoln's Inn Fields. Mar. 24.*  
Baker, Geo., Davies Street, Berkeley Square, Ironmonger. *Abbott, Off. Ass.; Allen & Co., Carlisle Street, Soho. Mar. 31.*  
Brown, John, Worthington, Cumberland, Mercer & Draper. *Messrs. Thompson, Worthington; Falcon, Crown Office Row, Temple. Mar. 31.*  
Byas, Daniel, Oxford Street, Upholsterer. *Becher, Off. Ass.; Parker, Fish Street Hill. Apr. 3.*  
Boardman, Benj., Norwich, Tailor & Draper. *Bignold & Co., Bridge Street, Blackfriars, and at Norwich. Apr. 3.*  
Ballen, John, Tynemouth, Northumberland, Farmer and Ship Owner. *Lowry, Finner's Hall Court, Broad Street, London; and at Tynemouth. Apr. 7.*  
Campbell, Charles, Arundel Street, Strand, Subscription Boarding & Lodging house Keeper. *Todd, South Square, Gray's Inn; Townsend, Off. Ass. Mar. 27.*  
Cunnington, John, sen., Spalding, Lincoln, Ironmonger. *Tooke & Co., Bedford Row; Edwards & Co., Spalding. Mar. 27.*  
Cowderoy, Chas., Mansion House Street, Kennington, Surrey, Grocer & Trader. *Olson, Off. Ass.; Broughton & Co., Falcon Square. Apr. 3.*  
Couch, Francis Paul, Launceston, Cornwall, Horse Dealer & Vintner. *Smith, Chancery Lane; Bligh, Cornwall. Apr. 7.*  
Caley, Rob., Queen's Row, Walworth, Surrey, Merchant & Bill Broker. *Edwards, Off. Ass.; Browne, Rood Lane, Fenchurch Street. Apr. 10.*  
Clayton, John, Buxton, Derby, Draper & Tailor. *Bradish & Co., Bow Churchyard; Grimstead & Co., Macclesfield. Apr. 14.*  
Dyson, Richard, Gloucester Street, Queen Square, Tailor. *Green, Off. Ass.; Taylor & Co., James Street, Bedford Row. Apr. 7.*  
Dix, Wm., Murslem, Stafford, Draper. *Johnson & Co., Temple; Messrs. Wood, Manchester. Apr. 14.*  
Eyre, Edward, Wells Street, Oxford Street, Blind Maker. *Hare, Tooke's Court, Curator Street; Camm, Off. Ass. Mar. 27.*  
Edmondson, Joseph, Blackburn, Lancaster, Cotton Manufacturer. *Makinson & Co., Temple; Makinson, Blackburn. Apr. 10.*  
Farr, Rob., Duncaster, York, Hardwareman. *Lower, Gony's Inn Square, Fisher, Duncaster. Mar. 20.*  
Fox, Wm., Weston-Hill, Nerwood, Croydon, Surrey, Victualler. *Sheppard & Co., Cloak Lane; Johnson, Off. Ass. Apr. 3.*  
Gorton, Wm., Gutter Lane, Cheapside, Fishmonger & Provision Merchant. *Becher, Off. Ass.; Horsley, Berner Street, Commercial Road East. Apr. 17.*  
Glover, Samuel Thackley, Idle, York, Cloth Manufacturer. *Strangways & Co., Barnard's Inn; Blackburn, Leeds. Mar. 27.*

- Grey, Samuel Porfelt, New Bond Street, Chemist & Druggist. *Gibson*, Off. Ass.; *Henson & Co.*, Bouverie Street. Mar. 81.
- Glossop, Joseph, Victoria Theatre, Waterloo Road, Surrey, Printer & Bill Seller. *Gibson*, Off. Ass.; *Lewis*, Bernard Street, Russell Square. Mar. 81.
- Gratwick, William, Goswell Street, Tea Dealer & Grocer. *Abbott*, Off. Ass.; *Mitchell & Co.*, New London Street, Fenchurch Street. Apr. 7.
- Green, George, & Anna Lynn, Golden Lane, Barbican, Leather Sellers. *Gibson*, Off. Ass.; *Badham*, Warwick Court, Gray's Inn. Apr. 10.
- Goodbody, Alex., Ludgate Street, Tailor. *Mayhew & Co.*, Carey Street, Lincoln's Inn; *Thynne*, Off. Ass. Apr. 14.
- Hughes, Rich. Cha., Leamington Priors, Warwick, Hotel Proprietor. *Roberts*, Millman Street, Bedford Row; *Empson*, Leamington. Mar. 20.
- Harbutt, Tho., Tynemouth, Northumberland, Brewer and Wine & Spirit Merchant. *Lowrey*, Finner's Hall Court, Broad Street, London; & at Tynemouth; *Fenwick*, North Shields. Mar. 24.
- Hackworth, Rich., Moulton, Lincoln, Wheelwright and Carpenter. *Johnson & Co.*, Holbeach; *Jeyes*, Chancery Lane. Mar. 27.
- Hardy, Elizabeth, Swanage, Purbeck, Dorset, Innkeeper. *Messrs. Parr, Poole & Holmes & Co.*, New Inn. Mar. 27.
- Hankes, Wm., Macclesfield, Chester, Brewer. *Swain & Co.*, London; *Proctor*, Macclesfield; *Harding*, Manchester. Mar. 81.
- Hill, John, South Milford, York, Teazle Dealer & Shopkeeper. *Strangways & Co.*, Barnard's Inn; *Blackburn*, Leeds. Apr. 8.
- Hall, Rob., Paradise Street, Rotherhithe, Surrey, General Dealer. *Pick*, Union Street; *Johnson*, Off. Ass. Apr. 10.
- Harrison, Stephen Wright, & William Harrison, North Shields, Northumberland, Scriveners & Ship Owners. *Robinson*, New Inn; *Tinsley*, Tynemouth. Apr. 14.
- Idle, Tho., Manchester, Fishmonger. *Mills & Co.*, Temple; *Crosley & Co.*, Manchester. Mar. 81.
- Johnson, Rob., Sneinton, Nottingham, Lace Manufacturer. *Bissas*, Essex Street; *Gregg*, Nottingham. Mar. 27.
- Johnson, Rich. Wm., Gloucester, Merchant. *Fleming*, New Boswell Court, Lincoln's Inn; *Locker*, Oxford. Apr. 17.
- Kennington, Tho., Wrawby, Lincoln, Horse Dealer. *Nicholson & Co.*, Briggs; *Dynaley & Co.*, Field Court, Gray's Inn. Mar. 24.
- Knight, James, Hastings, Sussex, Innkeeper & Victualler. *Norton*, Walbrook Buildings, Walbrook; *Scriveners*, jun. Hastings. Mar. 27.
- Kirdan, Tho., & Wm. Bunce, Blackman Street, Surrey, Woollen Drapers. *Parker*, St. Paul's Churchyard; *Lackington*, Off. Ass. Apr. 17.
- Leonard, James, Rugeley, Stafford, Bookseller & Stationer. *Bowden & Co.*, Aldermanbury; *Lackington*, Off. Ass. Mar. 27.
- Manwaring, Geo., sen., Wm. Manwaring, and Geo. Manwaring, jun., York Place, York Road, Lambeth, Surrey, Engineers & Millwrights. *Roche & Co.*, Charles Street, Covent Garden; *Watkinson*, Off. Ass. Mar. 20.
- Mallett, John, East Street, Walworth, Surrey, Grocer. *Elkins & Co.*, Newman Street, Oxford Street; *Lackington*, Off. Ass. Apr. 8.
- Maddox, John Gale, Bristol, Druggist. *Brooks & Co.*, John Street, Bedford Row; *Goldsmid*, Off. Ass. Apr. 8.
- Musson, Benj., Manchester, Grocer & Tallow Chandler. *Kershaw*, Manchester; *Johnson & Co.*, Temple. Mar. 20.
- Mitchell, Wm. Brightmore, Sheffield, York, Merchant & Manufacturer. *Biggs*, Southampton Buildings, Chancery Lane; *Haywood*, Sheffield. Mar. 27.
- Morris, John, sen., & John Morris, jun., Upper St. Martin's Lane, Auctioneers. *Reynolds*, Golden Square & *Casson*, Off. Ass. Apr. 7.
- Morris, James, Carnarvon, Ironmonger. *Trokers & Co.*, Lendenhall Street; *Wingate*, Bristol. Apr. 7.
- Marchetti, Joseph, Torquay, Devon, Victualler & Confectioner. *Fox*, Finsbury Circus; *Stokes*, Truro. Apr. 14.
- Noble, Wm. Alfred, & James Edington, Globe Stairs, Rotherhithe, Surrey, Engineers. *Holmes*, Liverpool Street, Broad Street. Mar. 20.
- Neirinekz, Auguste, Hammersmith, Middlesex, Builder. *Biggs*, Southampton Buildings, Chancery Lane; *Clark*, Off. Ass. Mar. 81.
- Nichols, Rich., Wakefield, York, Bookseller. *Addington & Co.*, Bedford Row; *Goldsmid*, Off. Ass. Apr. 8.
- Owen, Richard, Carnarvon, Draper. *Holme & Co.*, New Inn; *Bentley*, Birmingham. Mar. 24.
- Pettifer, Henry, Little Pultney Street, Soho, Cheesemonger. *Grove*, Off. Ass.; *Hastings & Co.*, Harpur Street, Red Lion Square. Mar. 20.
- Pugh, Charles, Newtown, Montgomery, Ironmonger. *Gri피스 & Co.*, Welch Pool. Mar. 20.
- Pell, Geo., Buttock's Booth, Weston Favell, Northampton, Victualler & Sheep Salesman. *Blackstock & Co.*, Temple; *Conke*, Northampton. Apr. 17.
- Robson, Wm., George Street, Mansion House, Printer & Stationer. *Sharp*, Ely Place, Holborn; *Graham*, Off. Ass. Apr. 2.
- Routh, John, Shirland, Derby, Corn Factor. *Smithson & Co.*, Southampton Buildings; *Messrs. Hutchinson*, Chesterfield. Apr. 3.
- Ruddock, James, King Street, Portman Square, Livrey Stable Keeper. *Chell*, Clement's Inn; *Clark*, Off. Ass. Apr. 7.
- Russell, Edw., & Wm. Philip Masters Croft, Tothill Street, Westminster, Tobacconists. *Digman*, King Street, Holborn; *Whitmore*, Off. Ass. Apr. 7.
- Swan, Henry, Great Knight Rider Street, Doctors' Commons, & Walcott Place, Hackney, Money Scrivener. *Wise*, St. Swithin's Lane; *Waikman*, Off. Ass. Mar. 27.
- Smth, Thomas, jun., East Grinstead, Sussex, Chemist & Druggist. *Groom*, Off. Ass.; *Dougley*, Horsleycove Lane, Southwark. Apr. 8.
- Smith, John Seymour, & John Gounn Bird, Manchester, Merchants. *Abbott & Co.*, Charlotte Street, Bedford Square; *Heale*, Manchester. Apr. 8.
- Spicer, Wm., Tower Street, Seven Dials, Licensed Victualler. *Edwards*, Off. Ass.; *Young & Co.*, Essex Street, Strand. Mar. 27.
- Smith, John Seymour, Manchester & Liverpool, Merchant. *Johnson & Co.*, Temple; *Bagsshaw & Co.*, Manchester. Mar. 27.
- Salsbury, Charles, Hull, York, Hatter & Shopkeeper. *Addington & Co.*, Bedford Row; *Mackison*, Manchester. Apr. 7.
- Styles, John, Elizabeth Place, North Brixton, Lambeth, Surrey, Lodging-house Keeper. *Manahan & Kennedy*, Chancery Lane; *Goldsmid*, Off. Ass. Apr. 10.
- Seward, Joseph Henry, Leominster, Hereford, Wine & Spirit Merchant. *Palmer & Co.*, Bedford Row; *Cosens & Co.*, Leominster. Apr. 14.
- Sheldon, James, Walsall, Stafford, Publican & Malster. *Hunt*, New Boswell Court, Lincoln's Inn; *Merkley*, Walsall. Apr. 14.
- Tardieu, Eleonore, Berners Street, Oxford Street, Dealer in Lace, & Private Lodging-house Keeper. *Walker*, Beaufort Buildings, Strand; *Whitmore*, Off. Ass. Apr. 17.
- Telfer, Geo., Phoenix Wharf, City Basin, Middlesex, Coal Merchant. *Gibson*, Off. Ass.; *Jordan & Webb*, High Street, Borough. Mar. 20.
- Thompson, Francis Frederick, Sloane Street, Chelsea, Middlesex, Wine Merchant. *Cross*, Surrey Street, Strand; *Clark*, Off. Ass. Mar. 24.
- Taylor, John, Coleman Street, Merchant. *Groom*, Off. Ass.; *Lloyd*, Crown Court, Chancery Lane. Apr. 3.
- Thomas, James, Coles' Wharf, & Thomas Street, Horsleydown, Surrey, Granary Keeper, Wharfinger, & Lighterman. *Barker & Co.*, Mark Lane; *Whitmore*, Off. Ass. Apr. 8.
- Veryard, Robert, Bristol, Flax Dresser & Twine & Sacking Manufacturer. *Hewson*, or *Hare & Co.*, Bristol. Apr. 10.
- Whitworth, John, Birmingham, Plumber, Glazier, & Painter. *Biggs*, Southampton Buildings, Chancery Lane; *Haywood*, Manchester. Mar. 20.
- Williams, George, Union Court, Old Broad Street, London, & Palmer Terrace, Holloway, Middlesex, Merchant & Agent. *Lackington*, Off. Ass.; *Hutchinson*, Crown Court, Threadneedle Street. Mar. 24.
- Williams, Rich., Tredwren, Montgomery, Nurseryman. *Clarke & Co.*, Lincoln's Inn Fields; *Williamson & Co.*, Shrewsbury. Mar. 24.
- Wadley, Tho., Liverpool, Merchant. *Taylor & Co.*, Bedford Row; *Miller & Co.*, Liverpool. Mar. 24.
- Wilkes, Wm., & Rich. Wilkes, Shrewsbury, Salop, Drapers & Tailors. *Taylor*, Middle Lane, Temple. Mar. 24.
- Whitley, John, Liverpool, Money Scrivener. *Taylor & Co.*, Bedford Row; *Lowndes & Co.*, Liverpool. Mar. 27.
- Waterfield, Tho., Dunstable, Bedford, Straw Hat Manufacturer. *Becher*, Off. Ass.; *Keene*, Farnival's Inn. Mar. 81.
- White, John, Barton-under-Needwood, Tatenhall, Stafford, Druggist & Grocer. *Dewry*, Burton-upon-Trent; *Bicknell & Co.*, Lincoln's Inn. Mar. 81.
- Witherden, John Shepard, Margate, Kent, Blacksmith. *Dering & Co.*, Margate; *Willet*, Essex Street, Strand. Mar. 81.
- Ward, Wm., Coventry, Ribbon Manufacturer. *Beck*, Ironmongers' Hall, Fenchurch Street. *Troughton & Co.*, Coventry. Apr. 10.
- Wilson, John Shrimpton, Portsmouth, Hants, Coach Proprietor. *Edwards*, Off. Ass.; *Smith*, High Street, Borough. Apr. 17.
- York, Thomas, Northampton, Carver, Gilder, & Picture Frame Maker. *Wimburn & Co.*, Chancery Lane; *Grey*, Daventry. Mar. 24.

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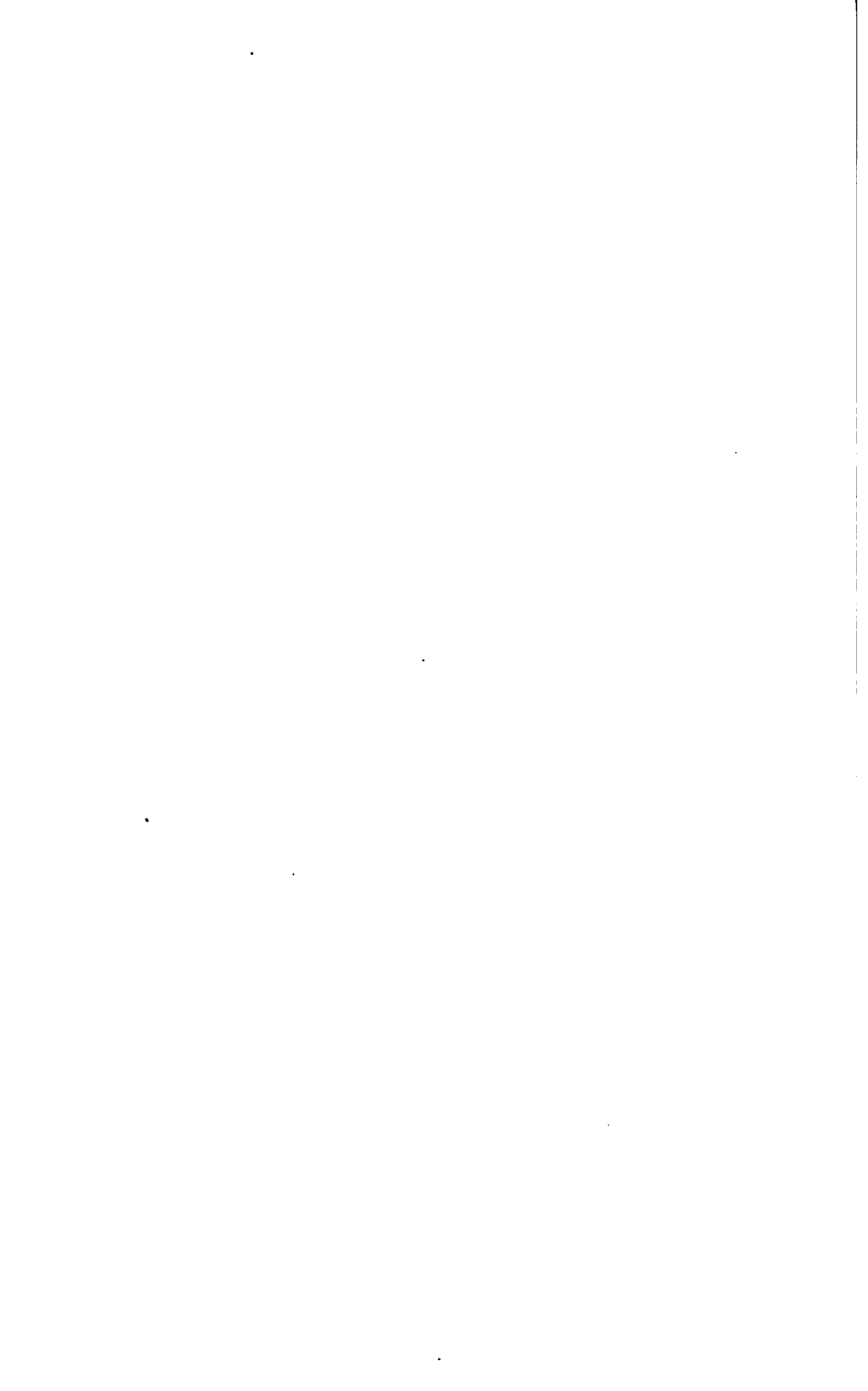
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